



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247, 250, 251, 253, 254

[FNS-2023-0026]

RIN 0584-AE92

Food Distribution Programs: Improving Access and Parity

AGENCY: Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA)

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service is proposing to amend its regulations to make access and parity improvements within several food distribution programs, including the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and USDA Foods disaster response. The proposed provisions use plain language to make them easier to read and understand.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Regular U.S. Mail: Food Distribution Policy Branch, Policy Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031-0885.

- Overnight, Courier, or Hand Delivery: Gregory Walton, Supplemental Nutrition and Safety Programs, Food Distribution Policy Branch, Food and Nutrition Service, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314.

- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <https://www.regulations.gov>.

- **FOR FURTHER INFORMATION CONTACT:** Gregory Walton, Program Analyst, Food Distribution Policy Branch, Supplemental Nutrition and Safety Programs, U.S. Department of Agriculture’s Food and Nutrition Service, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314 at 703-305-2746 or Gregory.Walton@usda.gov.

SUPPLEMENTARY INFORMATION:

Section 1: Background and Discussion of the Proposed Rule

Background

The Department of Agriculture’s (the Department or USDA) Food and Nutrition Service (FNS) works to end hunger and obesity through the administration of 16 federal nutrition assistance programs. The Coronavirus Disease 2019 (COVID-19) pandemic had devastating impacts on our nation’s food systems and economy, forcing millions of Americans to turn to the country’s emergency food network for aid. Through the provision of food and administrative funding, USDA FNS food distribution programs have assisted this network – made up of thousands of food banks, food pantries, Tribal governments and other community partners – in feeding those in need.

As the pandemic subsides, FNS has a key opportunity to apply lessons learned to improve food distribution programs, including through regulatory updates. These

proposed changes are intended to help ensure that eligible populations are able to more easily access the programs and streamline requirements for program operators.

This proposed rulemaking would amend regulatory provisions at 7 CFR 247, 250, 251, 253, and 254 to make access and parity improvements within several food distribution programs, including the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and USDA Foods disaster response. The proposed changes are discussed in detail below.

Discussion of the Rule's Proposed Provisions

a. Commodity Supplemental Food Program

Proposed revisions to CSFP regulations at 7 CFR 247 focus on increasing access to the program and standardizing language throughout the part. Program access would be increased by updating income eligibility guidelines for program participants. The update would also improve the readability of CSFP income calculation requirements by removing outdated references to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

i. Technical Updates to the Entire Part 247

The Department proposes technical updates throughout part 247. The term “elderly” is proposed to be replaced with “participants,” because CSFP is limited to participation by senior adults aged 60 years and above as of February 2020. The Agricultural Act of 2014 (Pub. L. 113-79, the Farm Bill) amended CSFP’s eligibility requirements to phase out the participation of women (under 60 years of age), infants, and children in the program, transitioning it to a seniors-only program. The Department recognizes that many Tribal communities recognize elders starting at the age of 55; however, per the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93-86, as amended), which authorizes CSFP, assistance under the Commodity Supplemental Food Program must only be provided to

low-income persons aged 60 years and older. In 7 CFR 247.2, the Department proposes removing reference to women, infants, and children receiving CSFP benefits as they are no longer a part of the program. Additionally, the Department proposes replacing the outdated term “commodities” with “USDA Foods.”¹

ii. Updates to Definitions (§ 247.1)

The Department proposes a new definition for the term “USDA Foods” to replace the outdated definition of “commodities.” The definition of “elderly persons” is proposed to be deleted, since § 247.9(a) specifies that CSFP-eligible individuals must be at least 60 years of age and because the term “elderly persons” is being replaced throughout the part. Finally, the definition of “proxy” is proposed to be updated to exclude a “participant’s adult parent,” because children are no longer eligible to participate in CSFP under the Agricultural Act of 2014 (Pub. L. 113-79).

iii. Public Posting of Availability of USDA Foods and State Plans
(§ 247.5)

The Department proposes adding a new provision at § 247.5(b)(16), which would require State agencies to make publicly available a list of all CSFP distribution sites, including both local agencies and agencies operating under an agreement with a local agency. At a minimum, the information would be required to be posted on a publicly available Internet webpage and updated on an annual basis, listing the name, address, and a contact telephone number for each site. State agencies are also encouraged, but not required, to develop tools to aid eligible individuals in accessing the program (e.g., a searchable tool

Footnotes:

¹ (250.2) Donated foods means foods purchased by USDA for donation in food assistance programs, or for donation to entities assisting eligible persons, in accordance with legislation authorizing such purchase and donation. Donated foods are also referred to as USDA Foods.

by ZIP code). State agencies may share any online resources they create with other organizations that serve CSFP-eligible individuals. Publicly listing all CSFP distribution sites would increase access to the program by helping direct potential participants to their closest distribution site.

The Department also proposes adding a new provision at § 247.5(b)(17), which would require State agencies to make publicly available the State Plan that is currently in use by the State agency on an Internet webpage. This proposed addition would modernize the current requirement at 7 CFR 247.6(a) that a copy of the State Plan must be kept on file at the State agency for public inspection and allow easier access to State Plans. The Department also proposes amending 7 CFR 247.6(a) to reflect the new requirement that State Plans be posted publicly on Internet webpages. See section iv. State Plan Requirement and Flexibility for Identification Verification for more details.

iv. State Plan Requirement and Flexibility for Identification Verification (§ 247.6)

As mentioned above in section iii. Public Posting of Availability of USDA Foods and State Plans, the Department proposes amending § 247.6(a) to reflect that a copy of the current State Plan must be made available on a publicly available Internet webpage in addition to the existing requirement that a copy be kept on file at the State agency for public inspection. This proposed amendment would modernize the current requirement and allow for easier access to the State Plan by the public.

To maintain program fairness and accountability, the Department also proposes amending § 247.6(c) to require State Plans to include a description of the process State agencies have in place to verify the identity of participants, or their proxies, before receipt of USDA Foods. The proposed process would be subject to approval by FNS. This is consistent with the Department's proposed change at § 247.10 to replace the

current federal regulatory requirement at § 247.10(b) that local agencies must require each participant or their proxy to present some form of identification at the time of distribution. The proposed changes would add language that local agencies must have a process in place to verify the identity of participants, in accordance with State agency requirements.

Taken together, the proposed changes would provide CSFP operators flexibility in how they verify the identity of participants or their proxies before distribution of USDA Foods, i.e., using the latest technology. The two proposed provisions would help support State and local agencies in modernizing the program's delivery methods, a change brought on by the unique operational challenges with home deliveries during the COVID-19 pandemic. See "vi. Changes to Identification Check at Distribution (§ 247.10)" for further details.

v. Eligibility Requirements (§ 247.9)

The Department proposes amending § 247.9(c) to increase CSFP's maximum income eligibility guidelines to 150 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services. This would be an increase from the current limit of 130 percent of the Federal Poverty Guidelines. The proposed increase to the income eligibility guidelines would provide increased access to the program by increasing the program's total eligible population and assist States in meeting their assigned caseloads. Increasing the maximum income eligibility guidelines would help bridge the gap between the number of seniors served and the total eligible caseload population nationwide without adding an administrative burden to applicants and local agencies.

Further, health data indicates that six in ten Americans live with at least one chronic disease, while one in four individuals live with two or more chronic conditions.² The prevalence of one or more chronic medical conditions increases with age, indicating that many adults of CSFP-eligible age are likely to live with one or more chronic medical conditions.³ Additionally, data from the Administration for Community Living indicates that adults over age 65 spend an average of 19 percent of their household income on out-of-pocket healthcare expenditures. In 2014, people ages 65 years and up spent an average of \$19,098 per year on health spending, 87 percent higher than the \$10,212 for those ages 45-64 and 293 percent higher than the \$4,856 for those ages 18-44.⁴ Seniors with incomes below 150 percent of the Federal Poverty Income guidelines are significantly more vulnerable to be at nutritional risk. Research from the Food Research and Action Center provides that there are more than 1.3 million food insecure individuals 65 years and older, and another 512,000 with very low food security.⁵ Through the proposed increase to the CSFP maximum from 130 percent to 150 percent of the U.S.

² Fiscal Year 2022 CSFP Caseload Assignment Memorandum. April 18, 2022. *USDA Food and Nutrition Service*. Accessed 15 December, 2022. Available at internet site: <https://www.fns.usda.gov/csfp/caseload-assignments-2022-caseload-cycle-and-administrative-grants>

³ Fiscal Year 2022 CSFP Caseload Assignment Memorandum. April 18, 2022. *USDA Food and Nutrition Service*. Accessed 15 December, 2022. Available at internet site: <https://www.fns.usda.gov/csfp/caseload-assignments-2022-caseload-cycle-and-administrative-grants>

⁴ *Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group. Age and Gender: Health Expenditures by Age and Gender*. Accessed 20 January, 2023. Available at internet site: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Age-and-Gender>

⁵ Food Research & Action Center. December 2019. *Hunger is a Health Issue for Older Adults: Food Security, Health, and the Federal Nutrition Programs*. Accessed 15 December, 2022. Available at internet site: <https://frac.org/wp-content/uploads/hunger-is-a-health-issue-for-older-adults-1.pdf>

Federal Poverty Guidelines, the Department recognizes that medical expenditures take up a significant proportion of many seniors' incomes and allows for expanded access for seniors who spend a significant portion of their incomes on such expenses.

Although the Department considered the addition of a medical deduction for CSFP, the Department believes the proposed increase in the gross income limit for CSFP, without the addition of a medical deduction, supports simplicity and ease in program administration, consistent with current practice. Further, the Department considered the increased burden that a medical deduction would place on program applicants and participants, which could pose a barrier to participation for those who have concerns about sharing health information and/or costs.

The Department seeks public comment on the proposed change to increase CSFP's maximum income eligibility guidelines to 150 percent of the U.S. Federal Poverty Guidelines without the addition of a medical deduction. Additionally, given the discretionary nature of CSFP and the need to target limited resources at individuals most in need, the Department would like to request public comment from CSFP stakeholders regarding whether there is a preference between the current proposal to increase CSFP's maximum income eligibility guidelines to 150 percent of the U.S. Federal Poverty Guidelines, or an alternate level of 185 percent of the U.S. Federal Poverty Guidelines. The Department recognizes that the alternate level of 185 percent of the U.S. Federal Poverty Guidelines would align CSFP with the Senior Farmers' Market Nutrition Program (SFMNP), which provides low-income seniors with access to access to fresh, nutritious, unprepared, locally grown fruits and vegetables, honey, and herbs.

In § 247.9(d), the Department proposes removing references to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). With this change, the income exclusions that previously followed the WIC regulations at 7 CFR 246.7 are proposed to be updated to be CSFP-specific by directly listing such exclusions.

Finally, the Department seeks public comment regarding potential future changes to eligibility requirements to allow CSFP applicants to demonstrate eligibility for CSFP via participation in another Federal means-tested program with income limits at or under the CSFP threshold. Per 7 CFR 247.9 Eligibility Requirements, CSFP applicants must meet the household income limit to be eligible for the program. Currently, State agencies have the option of allowing self-declaration of income or requiring proof of income to demonstrate eligibility. The Department is considering a future change to allow State agencies to accept participation in Federal programs such as the Supplemental Nutrition Assistance Program (SNAP), the Food Distribution Program on Indian Reservations (FDPIR), and Supplemental Security Income (SSI) as demonstrating eligibility for CSFP. The Department is seeking feedback from CSFP State agencies, ITOs, and other stakeholders on this proposal, and specifically on the following questions:

1. Are there other Federal programs that you would like USDA to consider as options to demonstrate eligibility for CSFP?
2. Should USDA consider an option for State agencies to have the flexibility to include State means-tested programs to demonstrate eligibility for CSFP?

vi. Changes to Identification Check at Distribution (§ 247.10)

The Department proposes updating the language in § 247.10(b), in conjunction with § 247.6(c), to increase flexibility in local agencies' ability to check the identity of participants or their proxies before distributing USDA Foods. The Department proposes replacing the current federal regulatory requirement at § 247.10(b) that local agencies must require each participant or their proxy to present some form of identification at the time of distribution with the requirement that local agencies must have a process in place to verify the identity of participants, in accordance with State agency requirements. This proposed change would allow local agencies and participants more flexibility in satisfying the requirement and would support State and local agencies in modernizing the

program's delivery methods, for example through innovative partnerships with third-party entities, such as entities which deliver food packages directly to participants' homes. The COVID-19 pandemic has presented unique operational challenges with home deliveries. This proposal would allow for flexibility for purposes of verifying receipt of food packages and the identity of applicants. Ultimately, in accordance with State agency requirements, local agencies must verify participants' identities and have a system in place to verify that the USDA Foods are received by the participant for which such foods are intended.

vii. Referral Materials for the Senior Farmers' Market Nutrition Program (§ 247.14)

The Department proposes updating § 247.14(a) with a new paragraph (4) that requires local agencies, where applicable, to share written information and referrals to the SFMNP with applicants, increasing awareness and access to other senior nutrition assistance programs relevant to CSFP participants. Both CSFP and SFMNP work in tandem to serve the low-income senior population and the benefits provided by each program help meet the nutritional needs of seniors at nutritional risk. Adding this information sharing requirement increases access to USDA programs by directly informing potentially eligible individuals of their access to SFMNP, increasing low-income seniors' ability to access fresh, nutritious, unprepared, locally grown fruits, vegetables, honey, and herbs, where applicable. The information sharing requirement may help increase the domestic consumption of nutritious foods and directly support locally-grown foods offered through farmers' markets, roadside stands, and community supported agricultural programs.

viii. Nondiscrimination Statement Update (§ 247.37)

The Department proposes updating § 247.37(a) to advise the public that CSFP must be operated in accordance with the most up-to-date USDA nondiscrimination statement. The current USDA nondiscrimination statement applicable to CSFP prohibits

discrimination on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity. The proposed change to § 247.37(a) would align the regulations with the nondiscrimination statement if it changes in the future.

b. USDA Foods in Disasters and Situations of Distress

Revisions to USDA Foods disaster response regulations (7 CFR 250.69 and 250.70) focus on clarifying the requirements for the use of USDA Foods in disasters and situations of distress. A disaster refers to a Presidentially declared disaster or emergency, as defined in Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179-5180). Situations of distress differ from disasters in that situations of distress are natural catastrophes or other events that do not meet the definition of a Presidentially declared disaster or emergency, but that, in the determination of the State distributing agency or of FNS, as applicable, warrant the use of USDA Foods to assist survivors of such catastrophe or other event. Examples of situations of distress may include hurricanes, floods, snowstorms, or explosions. USDA Foods were used widely for disaster response during the first year of the COVID-19 pandemic. FNS is applying lessons learned from the pandemic to streamline these provisions.

i. Technical Updates to 250.69 and 250.70

Proposed technical updates to parts 250.69 and 250.70 include replacing the outdated terms “commodities,” “food commodities,” “donated commodities,” and “donated foods,” with “USDA Foods” to further align with the definition of “USDA Foods” in 7 CFR 250. The term commodities is no longer commonly used and has been replaced by “USDA Foods.” Proposed technical updates would include reorganization for clarity as well.

ii. Removal of Prohibition on Simultaneous Provision of USDA

[Donated] Foods and D-SNAP During a Disaster (§ 250.69(c)(2))

The Department proposes removing language at § 250.69(c)(2) which prohibits the simultaneous provision of USDA Foods and Disaster Supplemental Nutrition Assistance Program (D-SNAP) benefits during a disaster. Receipt of USDA Foods for home consumption and D-SNAP benefits at the same time is not prevented by The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5180). Distribution of USDA Foods during a disaster does not supplant or duplicate the benefit to the household which D-SNAP provides, as D-SNAP is a temporary food assistance benefit provided to households to purchase foods, as opposed to a food package benefit provided for home consumption. Distribution of USDA Foods during a disaster is intended to operate in the immediate aftermath of a disaster, when commercial food distribution channels are disrupted, stores are closed due to power outages, or roads are inaccessible. In general, D-SNAP benefits would not be able to be readily utilized until the retail grocery infrastructure was fully functional. State distributing agencies responding to disasters must work quickly to provide food assistance to households in need which may not have access to personal documents or a complete understanding of available food assistance resources. Removing the requirement that distributing agencies confirm whether a household has received D-SNAP benefits reduces the amount of information collected and verified for each applicant household, which may allow for expedited food provision during times of high need.

iii. Clarification of Requirements for Distribution of USDA Foods

During a Disaster (§ 250.69)

As State agencies operated disaster household distributions during the COVID-19 pandemic, it became apparent to the Department that many State agencies had difficulty understanding which provisions of § 250.69 apply to congregate meals and which apply

to distribution to households. The current organization of § 250.69(c) provides information that State distributing agencies must consider when determining which disaster organizations may serve either congregate meals or USDA Foods for household consumption. In some instances, State distributing agencies approved disaster organizations to provide USDA Foods for home consumption without ensuring that those disaster organizations had provided the additional information beyond what was required for organizations serving congregate meals, as required by § 250.69(c)(2). In order to clarify which requirements apply to approval of disaster organizations serving congregate meals and which requirements apply to disaster organizations providing USDA Foods for household consumption, proposed revisions to the rule would reorder provisions so that all congregate meal language, including language from § 250.69(c) and the entirety of § 250.69(e), would be consolidated into a single provision at proposed § 250.69(a) to clarify the use of USDA Foods in congregate meals. Similarly, all language relevant to distribution to households, including language from § 250.69(c) and the entirety of § 250.69(d), is proposed to be consolidated into a single provision at proposed § 250.69(b) to clarify the use of USDA Foods for distribution to households. Section 250.69(f) *Reporting and recordkeeping requirements*, § 250.69(g) *Replacement of donated foods*, and § 250.69(h) *Reimbursement of transportation costs*, which apply to both methods of distribution, are proposed to remain separate. The Department proposes to redesignate these sections to § 250.69(d) *Reporting and recordkeeping requirements*, § 250.69(e) *Replacement of donated foods*, and § 250.69(f) *Reimbursement of transportation costs*, respectively.

iv. Limitation on Impacts to Other Programs (§ 250.69(c) and § 250.70(c))

The Department proposes a new paragraph in 250.69(c) and 250.70(c) that would ensure that the use of USDA Foods for disaster response activities does not have an ongoing

negative impact on the operation of other programs. USDA Foods for disaster response activities are typically drawn from local USDA Foods inventories that support permanent programs such as TEFAP. The prolonged nature of the COVID-19 pandemic has been atypical when compared to previous Presidentially declared disasters or emergencies that lasted weeks or months rather than years. This provision would ensure that State agencies consider the operation of other USDA Foods programs when making decisions about using USDA Foods for disaster response activities.

v. Updated Reporting Requirements for Distribution of USDA
Foods to Households During a Disaster (§ 250.69(d))

The Department proposes introducing a new weekly State distributing agency reporting requirement for disaster household distributions at the newly proposed § 250.69(d). During the COVID-19 pandemic, State distributing agencies significantly increased distribution of USDA Foods for household consumption to meet the increased need for food assistance and to comply with social distancing requirements. State distributing agencies must submit FNS Form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, to FNS 45 days after the termination of disaster assistance to report the types and amounts of USDA Foods from distributing or recipient agency storage facilities used in disaster assistance. The prolonged nature of the COVID-19 pandemic and the quantity of USDA Foods distributed illustrated that restricting reporting of USDA Foods distributed until after the end of the disaster assistance period presents a challenge for the tracking of USDA Foods inventories available nationally and within States, and USDA and State distributing agencies' ability to source and distribute foods to meet the needs of the public. To improve USDA's ability to mobilize foods to areas affected by disasters, the Department proposes requiring a new weekly report which State distributing agencies must complete if disaster household distribution persists for longer than 14 calendar days. Weekly tracking of USDA Foods served via disaster household distribution, beginning 14

days after the start of distribution, would improve USDA's and State distributing agencies' understanding of the quantity and types of USDA Foods available for emergency response. This would also facilitate USDA's efforts to replace USDA Foods used in disaster response to prioritize nutrition security for participants in all programs serving USDA Foods. Furthermore, the proposed weekly reporting would require State distributing agencies to report the total number of individuals receiving assistance through disaster household distributions, which would provide USDA with an improved understanding of how many affected individuals are receiving assistance.

vi. Removal of the Prohibition on the Simultaneous Provision of
USDA [Donated] Foods and D-SNAP During Situations of
Distress (§ 250.70(d))

The Department proposes removing language at § 250.70(d) which prohibits simultaneous provision of USDA Foods and Disaster Supplemental Nutrition Assistance Program (D-SNAP) benefits simultaneously during situations of distress. Distribution of USDA Foods during a situation of distress does not supplant or duplicate the benefit to the household which D-SNAP provides, as D-SNAP is a temporary food assistance benefit provided to households to purchase foods, as opposed to a food package benefit provided for consumption. As with distribution of USDA Foods during a disaster, distribution of USDA Foods during a situation of distress is intended to operate in the immediate aftermath of a disaster. State distributing agencies responding to disasters must work quickly to provide food assistance in conditions which may vary from typical operating conditions, and to households which may not have access to documents and which may be unfamiliar with food assistance resources. Removing the requirement that State distributing agencies confirm whether a household has received D-SNAP benefits reduces the amount of information collected and verified for each applicant household, allowing for expedited provision of foods during times of high need.

vii. Clarification of Requirements for Distribution of USDA Foods

During Situations of Distress (§ 250.70)

Proposed revisions to reorder § 250.70 for clarity parallel revisions to § 250.69 above.

Proposed revisions would reorder provisions so that all congregate meal language, including language from § 250.70(c) and the entirety of § 250.70(e), are consolidated into a single provision at proposed § 250.70(a) to clarify the use of USDA Foods in congregate meals. Similarly, all language relevant to distribution to households, including language from § 250.70(c) and the entirety of § 250.70(d), are proposed to be consolidated into a single provision at proposed § 250.70(b) to clarify the use of USDA Foods for distribution to households. § 250.70(f) *Reporting and recordkeeping requirements*, § 250.70(g) *Replacement of donated foods*, and § 250.70(h) *Reimbursement of transportation costs*, which apply to both methods of distribution, are proposed to remain separate. The Department proposes to redesignate these sections to § 250.70(d) *Reporting and recordkeeping requirements*, § 250.70(e) *Replacement of donated foods*, and § 250.70(f) *Reimbursement of transportation costs*, respectively.

c. The Emergency Food Assistance Program (TEFAP)

The Department proposes revisions to TEFAP regulations (7 CFR 251) which would focus on improving access to the program by simplifying requirements for program operators and enabling FNS to obtain better data on the reach of current program operations. Among the changes, the Department proposes eliminating barriers to program access by prohibiting State agencies from collecting an address as part of determining program eligibility and requiring State agencies to develop processes for eligible households to meet residency requirements at § 251.5(b). The Department also proposes requiring States to publicly post statewide eligibility requirements to make information about the program more easily accessible to the public at proposed § 251.4. Additionally, the proposed rule would update Farm to Food Bank Project requirements to

simplify and make technical updates to administrative requirements for State agencies, in particular Farm to Food Bank Project reporting requirements, which have become points of confusion for program stakeholders.

i. Technical Updates to the Entire Part 251

Proposed technical updates to part 251 include replacing instances of the outdated terms “commodities,” “food commodities,” “TEFAP commodities,” “TEFAP foods,” “donated foods,” and “donated commodities” to “USDA Foods” to further align the program with the definition of “USDA Foods” in 7 CFR 250. The term commodities is no longer commonly used and has been replaced by “USDA Foods.” Additional technical corrections are noted, as applicable, in section discussions below.

ii. Technical Clarification to the Definition of a Food Bank (§ 251.3)

The Department proposes removing a description of food provided by food banks in § 251.3(f), deleting “or edible commodities, or the products of food or edible commodities” from the definition of *food bank*, as this description caused confusion about the types of foods to which regulations apply.

iii. Requirement for the Public Posting of Availability of USDA Foods through TEFAP and Encouraging Distribution of USDA Foods in Tribal Areas (§ 251.4)

To improve public access to TEFAP, the Department proposes clarifying requirements for standards of communication about TEFAP eligible recipient agencies in the new proposed section § 251.4(l) and strengthening program regulations at § 251.4(k) to encourage distribution of USDA Foods in Tribal areas.

1. Eligible recipient agencies are organizations that distribute USDA Foods through TEFAP. The Department proposes requiring TEFAP State agencies to post information

about eligible recipient agencies and TEFAP statewide eligibility criteria to publicly available websites to help the public understand where they may receive USDA Foods through TEFAP. This requirement would be codified in the proposed new section 251.4(l). Eligible recipient agency information that must be publicly posted includes the name, address, and a contact telephone number for all eligible recipient agencies which distribute USDA Foods to other eligible recipient agencies, to eligible households for home consumption, or in prepared meals. The Department proposes requiring State agencies to update this information annually. State agencies are encouraged but not required to post more frequent updates as they are needed and include additional information, such as operating hours, the areas served by the eligible recipient agency, links to eligible recipient agency websites, and distribution site addresses. Requiring State agencies to post complete eligible recipient agency information on publicly available websites would help eligible households understand where they may receive benefits and which eligible recipient agencies they may contact for additional program information. This proposed requirement would allow FNS to better understand the number and location of eligible recipient agency sites, which would, in turn, improve understanding of where TEFAP is available nationally, and where program coverage may need to be improved.

2. In addition, the Department proposes updating § 251.4(k) to encourage State agencies and eligible recipient agencies to implement or expand distributions of USDA Foods in Tribal areas, in addition to the rural areas already listed. During the COVID-19 pandemic, TEFAP eligible recipient agencies across the country stepped up to meet a substantial increase in need for emergency food assistance that, in some areas, has not yet subsided. The Department applauds our TEFAP partners for these continued efforts, while also recognizing that the pandemic has exposed some inequities within our nation's broader emergency food network – especially in Tribal communities. In FY

2022 and FY 2023, USDA made \$100 million in TEFAP Reach and Resiliency grant funding available to all TEFAP State agencies to carry out projects to expand the reach of TEFAP into remote, rural, Tribal, and/or low-income areas. These funds are being used, in part, to expand TEFAP partnerships in Tribal areas and to strengthen the emergency food assistance network in Indian country. The Department proposes to further encourage TEFAP distributions and activities in Tribal areas through this proposed regulatory change, to ensure that TEFAP's collective reach spreads to all eligible individuals in need.

iv. State Agency Options for TEFAP Eligibility Criteria,
Documentation, and Public Communication (§ 251.5)

The Department proposes revisions to TEFAP regulations to increase alignment of income eligibility criteria nationwide, ensure access for vulnerable individuals, and ensure that statewide eligibility criteria are posted in a manner accessible to the public.

1. TEFAP Maximum Income Eligibility Range and State
Agency Option for Alternative Income Eligibility
Thresholds (§ 251.5(b)(2))

Per section 202A(b)(4)(A) of the Emergency Food Assistance Act of 1983 (Pub. L. 98-92 as amended), TEFAP State agencies must ensure that standards of eligibility require participating households to be comprised of "needy persons." Current regulations at § 251.5(b)(2) require State agencies to develop statewide income-based eligibility standards, but do not include a suggested income range that States should use for developing those requirements. Proposed revisions to income-based standards would include a maximum income eligibility threshold that is at or between 185 percent to 250 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). For example, a TEFAP State agency may set its maximum income eligibility criterion at 185 percent of the U.S. Federal

Poverty Income Guidelines published annually by HHS. Another TEFAP State agency may set its maximum at 200 percent of the Federal Poverty Income Guidelines, while another TEFAP State agency may set its maximum at 250 percent. Consistent with current program requirements at § 251.5(b), such standards set by a TEFAP State agency must be applied uniformly statewide.

Overall, this proposed revision would reduce the variance in income eligibility criteria across States. As of September 2022, income eligibility ranged from 125 percent to 400 percent of U.S. Federal Poverty Income Guidelines, nationally. Establishing a national, allowable range for income eligibility would allow the Department to protect TEFAP access for those individuals most in need while simultaneously providing State agencies flexibility to develop income-based eligibility criteria which account for variance in cost of living across States.

Under this proposal, the Department would permit TEFAP State agencies to develop maximum income-based eligibility standards above this range if they provide rationale for their proposed threshold, subject to FNS approval.

2. Methods for Verifying Residency (§ 251.5(b)(3))

Per § 202A(b)(4)(B) of the Emergency Food Assistance Act of 1983 (Pub. L. 98-92 as amended) and § 251.5(b)(3), TEFAP State agencies must set forth standards of eligibility for recipients of USDA Foods which require participating individuals or household members to reside in the geographic location served by the State agency at the time of applying for assistance. Proposed revisions to this paragraph would require State agencies to develop a process for requesting residency information to determine eligibility that does not require an address or identification, such as self-declaration of residency by the applicant. Furthermore, this proposed revision would prohibit State agencies from requiring households to provide an address or identification to confirm

residency as part of their statewide eligibility criteria. Related to this proposal, the Department proposes amending regulations to remove the federal address collection requirement in current § 251.10(a)(3) and proposes establishing requirements for protecting information obtained from applicants and participants to establish eligibility. This proposed change would ensure that TEFAP agencies would retain the ability to develop statewide eligibility criteria which fit their needs, while supporting program access for vulnerable individuals and households. See preamble section (vii)(1) Removal of Federal Address Collection Requirements and Establishing Confidentiality Protections for Applicant and Participant Household Information (§ 251.10(a)(4), § 251.10(c)) for further details.

3. Public Posting of Statewide TEFAP Eligibility Criteria (§ 251.5(b))

Current regulations do not direct State agencies on how they must inform the public of TEFAP statewide eligibility criteria. Proposed revisions to § 251.5(b) would require State agencies to post to publicly available websites statewide eligibility criteria, including requirements for demonstrating income and residency. Clarifying standards of communication for statewide eligibility criteria would ensure that eligible applicants are more easily able to understand how they may receive TEFAP, as well as requirements for demonstrating eligibility.

v. Updated Reference for Farm to Food Bank Projects (§ 251.6)

Proposed revisions to this section would update the paragraphs cited for information that must be included in TEFAP State Plans for Farm to Food Bank Projects. A new proposed provision would encompass all provisions related to Farm to Food Bank Projects at new § 251.13.

vi. Updated Reference for TEFAP Reporting Requirements (§ 251.9)

Proposed revisions to this section would update the paragraph cited for the FNS-667, *Report of TEFAP Administrative Costs*. Provisions in § 251.10 are proposed to be updated for clarity and improved readability, resulting in redesignation of several provisions. The proposed, revised paragraph at § 251.9(e) references the newly redesignated paragraph § 251.10(b)(1).

vii. Removal of Federal Address Collection Requirements, Redesignations, and Updated References for Miscellaneous Provisions (§ 251.10)

The Department proposes removing federal address collection requirements for TEFAP participants who receive USDA Foods for home consumption at proposed § 251.10(a)(4), adding requirements for protecting information obtained from TEFAP applicants and participants at § 251.10(c), and redesignating sections of the entire § 251.10 in order to improve clarity and readability.

1. Removal of Federal Address Collection Requirements and Establishing Confidentiality Protections for Applicant and Participant Household Information (§ 251.10(a)(4), § 251.10(c))

Current regulations at § 251.10(a)(3) require distribution sites to collect the addresses of households receiving USDA Foods for home consumption and maintain the record of participant addresses per the retention policy described in § 251.10(a)(4). The federal address collection requirement is administratively burdensome for program operators and does not serve a demonstrated program need. During the COVID-19 pandemic, increased demand at emergency feeding organizations resulted in long lines for families

searching for food assistance. Removing the federal address collection requirement would simplify the administration of TEFAP for eligible recipient agencies. Removing the federal address collection requirement would also allow States to develop more streamlined methods for determining TEFAP applicant residency, which may help local program operators reduce wait time for food distribution. Additionally, FNS has received many questions about the necessity of collecting addresses from persons who have difficulty providing this information for reasons such as being unhoused. The Department proposes removing federal address collection requirements for TEFAP participants who receive USDA Foods for home consumption at proposed § 251.10(a)(4).

Current regulations do not include requirements for protecting the confidentiality of TEFAP applicants or participant household information. To ensure protection of information collected from households, and to align recordkeeping and retention requirements with those of other food assistance programs, proposed regulations would establish confidentiality requirements in the new § 251.10(c). The proposed section would define the information which must be kept confidential and would explain limits on disclosure of information obtained from applicants or participants and the identity of persons making a complaint or allegation against persons participating in or administering the program.

2. Nondiscrimination Statement Update (§ 251.14(b)))

The Department proposes updating current § 251.10(c) and redesignating as § 251.14(b) to advise the public that TEFAP must be operated in accordance with the most up-to-date USDA nondiscrimination statement.

The current USDA nondiscrimination statement applicable to TEFAP prohibits discrimination on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights

activity. The proposed change to newly proposed § 251.14(b) would align the regulations with the current applicable USDA nondiscrimination statement and any future changes to the nondiscrimination statement.

3. Eligible Recipient Agency and Household Distribution

Participation Reporting (§ 251.10(b)(3) and § 251.10(b)(4))

The Department proposes updating 251.10(b) with two new provisions to improve understanding of program coverage and participation in TEFAP. The proposed provision would collect information on eligible recipient agencies and TEFAP participants.

Proposed revisions would establish a requirement for the public posting of eligible recipient agency information in new paragraph 251.4(l), described in (c)(iii) above, to improve public access to TEFAP. In proposed 251.10(b)(3), the Department proposes to require TEFAP State agencies report this information to FNS on an annual basis so that FNS may understand where TEFAP services are offered and the landscape of eligible recipient agencies participating in TEFAP nationally. The list provided to FNS would include eligible recipient agencies that have agreements with a State agency and eligible recipient agencies that have agreements with another eligible recipient agency. The list would also include eligible recipient agencies that distribute USDA Foods for home consumption and those that distribute USDA Foods in the form of prepared meals. This would allow FNS to better understand areas where there may be gaps in service, and work with States to eliminate these gaps.

Per current 251.10(a)(3), each distribution site must collect and maintain on record the name of the household member receiving USDA Foods for home consumption, as well as the address of the household to the extent practicable, and the number of persons in the household. The Department proposes removing the collection of

household addresses as described in (c)(iv)(1) above. To understand how many individuals participate in TEFAP through the distribution of USDA Foods for home consumption, the Department proposes to add a requirement in proposed 251.10(b)(4) that State agencies report the total number of persons participating in TEFAP in this manner. State agencies would be required to report the total monthly number of individuals receiving USDA Foods through TEFAP for home consumption on a quarterly basis. The Department intends to align timing of this report with other required quarterly reporting, such as administrative funds usage, in order to minimize reporting burden for State agencies.

4. Technical Corrections for Miscellaneous Provision (§ 251.10(d) and (f))

The Department proposes updating § 251.10(d) to correct an error in a reference to reporting requirements. The current reference to reports of excessive inventory directs readers to § 250.17(a), and this would be corrected to direct readers to § 250.18 *Reporting requirements*.

The Department proposes updating paragraph (f) references to reflect redesignations and newly created sections in the proposed rule, which are discussed below. The Department also proposes clarifying the requirements for limits on unrelated activities during the administration of TEFAP, and potential consequences for violation of these limits by more clearly stating existing requirements.

5. Redesignations for Miscellaneous Provisions (§ 251.10)

The Department proposes breaking current § 251.10 Miscellaneous into five distinct sections: § 251.10 Reports and recordkeeping, § 251.11 State monitoring system, § 251.12 Limitation on unrelated activities, § 251.13 Farm to Food Bank projects, and § 251.14 Miscellaneous. These proposed revisions would significantly improve the

readability of the regulation, with the ultimate intent of reducing confusion on the part of State agencies. Current § 251.10 contains paragraphs (a) through (j) and includes topics ranging from reports and recordkeeping to Farm to Food Bank Projects. In this proposed rulemaking, all previous provisions would be retained, but several are proposed to move to new proposed paragraphs for clarity. The proposed revision establishes a new § 251.10, Reports and recordkeeping, for all TEFAP reports and recordkeeping information and is updated to include confidentiality requirements for information about TEFAP participant households, as explained above.

6. New Sections Created for Clarity (§ 251.11, § 251.12, § 251.13, and § 251.14)

The new proposed § 251.11 would include requirements for State agency monitoring systems, and the new proposed § 251.12 would explain limitations on unrelated activities at TEFAP distributions. Farm to Food Bank Project regulations are proposed to be moved into a new, proposed § 251.13 so that State agencies can easily locate all requirements for these projects. New proposed § 251.14 would include miscellaneous provisions that are not closely related to other provisions, such as nondiscrimination and use of volunteer workers and non-USDA foods.

d. Food Distribution Program on Indian Reservations (FDPIR)

Proposed revisions to FDPIR regulations (7 CFR 253) focus on establishing further parity between FDPIR eligibility requirements and the Supplemental Nutrition Assistance Program (SNAP) and ensuring program access. Among the proposed changes, the Department proposes clarifying the household concept for purposes of FDPIR eligibility for spouses living together and spouses living apart in separate households, removing the urban place requirement which limits the operation of FDPIR in approved near areas and/or service areas that have a population of 10,000 people or more, updating the

shelter/utility standard deduction to remove the Regional standard deduction and set forth a revised approach pursuant to Tribal leader and FDPIR program community feedback, and establishing a limited administrative waiver to be more consistent with SNAP waiver authorities.

i. Technical Updates to the Entire Part 253

Proposed technical corrections throughout part 253 would replace instances of the outdated terms “commodity” and “commodities” with “USDA Foods” and the outdated term “Food Stamps” with “SNAP,” the Supplemental Nutrition Assistance Program.

These updates align part 253 in accordance with other sections in this chapter.

Additional technical corrections are noted, as applicable, in section discussions below.

ii. Removal of Urban Place Definition (§ 253.2 and § 253.4)

In § 253.2 and § 253.4, the Department proposes to remove the urban place regulatory references and the associated requirement that an FDPIR Indian Tribal Organization (ITO) or State agency must provide a justification to FNS to serve urban places off the reservation. Per § 253.2, an urban place is defined as a city or town with a population of 10,000 or more. Currently, per FDPIR regulations at § 253.4(d), any urban place outside of the reservation boundaries may not be served unless an ITO or State agency requests to serve the urban place with a justification.

Tribal leaders and the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR) Board have submitted multiple Resolutions to FNS to remove and/or adjust the definition of urban place to increase the population from 10,000.

Resolutions have cited the nutritional needs of Tribal members, their preferences for FDPIR benefits over SNAP, access to FDPIR nutrition education which is more tailored to meet Tribal needs, and a desire to remain connected to Tribal services. The FDPIR community has expressed frustration with the administrative difficulties in applying for

an “urban place waiver,” and with what is perceived to be an arbitrarily low population cap of 10,000.

The current restriction on the Program’s operation in urban places is an outdated provision which unnecessarily limits the availability of FDPIR for Tribal members in urban areas. This proposed change would increase program access and reach, allowing the potential for more individuals in need to receive nutritious FDPIR food package benefits, and allows households to have the option to choose between FDPIR and SNAP within the month in any area where FDPIR is available. The proposed change would not remove the dual participation statutory prohibition for a household to participate in FDPIR and SNAP within the same month; however, a household may more easily have the flexibility to move between both programs from month to month as they see fit without the urban place requirements in place.

Conforming revisions are proposed below to 7 CFR part 254, Administration of the Food Distribution Program for Indian Households in Oklahoma.

Additionally, the Department proposes changing the term “contract” in § 253.4(b)(3) to “delegate” in order to improve the clarity of the section and to be consistent with language used in 7 CFR 247, 250, and 251.

iii. Periodically Assessing the FDPIR Food Package (§ 253.3)

In § 253.3, the Department proposes adding a new requirement for FNS to periodically assess how USDA Foods provided in FDPIR compare to the Dietary Guidelines for Americans (DGAs) and the market baskets of the Thrifty Food Plan (TFP) and, to the extent practicable, adjust the FDPIR food package benefit as needed to ensure the FDPIR food package continues to be consistent with these assessments of basic dietary needs. The proposed provision would prohibit the FDPIR food package benefit from being reduced as a result of the analysis. Currently, FNS makes changes to the food package at

the request of stakeholders through the FDPIR Food Package Review Work Group (the Work Group). The Work Group is critical to this process and helps make changes to the food package, including adding additional units (i.e., increasing volume) and increasing food variety within the food package. The proposed change to § 253.3 will not limit the Work Group's ability to implement changes and improvements to the food package independent of these assessments. If an assessment results in potential proposed changes to the FDPIR food package benefit, the Work Group process will continue to be followed to consider such changes.

For background, current FDPIR regulations do not include language regarding the method that is used to make changes to the benefit level of the food package. In 2002, at the request of stakeholders such as the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR), FNS established the FDPIR Food Package Review Work Group (the Work Group). The goal of the Work Group is to consider revisions to the food package to better meet the nutritional needs and food preferences of program participants. The types of changes that have been implemented by the Work Group include increasing choices in a particular food category, changing the size of products, and improving the quality and nutrient profile of USDA Foods provided by FDPIR. Each prospective change is considered in terms of its impact on the people being served, the nutrient profile, and the cost of the entire food package. Any adjustments made to the FDPIR Food Package as a result of this proposed change would be discussed with the Work Group. This proposed provision would help ensure that the FDPIR food package stays more consistent with changes made in SNAP.

Additionally, the Department proposes updating the provisions at 7 CFR 253.3(a)(2) to clarify in plain language that FDPIR households can receive FDPIR USDA Foods as well as other USDA Foods programs in the same month in accordance with the requirements of part 250 and with other federal regulations applicable to specific USDA Foods

programs. FDPIR households can currently receive USDA Foods through FDPIR and other USDA Foods in the same month, but current language only includes the Commodity Supplemental Food Program (CSFP).

The Department also proposes a technical correction that would remove the list of food groups in the FDPIR food package from 7 CFR 253.3(d). This list is outdated and FNS publishes the current list of food groups in Exhibit O of the 501 Handbook.

iv. Nondiscrimination Statement Update (§ 253.5)

The Department proposes updating § 253.5(a)(2)(iv) to advise the public that FDPIR must be operated in accordance with the most up-to-date USDA nondiscrimination statement. This currently includes prohibiting discrimination on the basis of race, color, national origin, sex (including gender identity and sexual orientation), religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity. The proposed change would align the regulations with the current applicable USDA nondiscrimination statement and any future changes to the nondiscrimination statement.

v. Updates to FDPIR Eligibility Provisions (§ 253.6)

The Department proposes making several changes to FDPIR eligibility provisions at 7 CFR 253.6 to increase access to the program and to improve consistency between FDPIR and SNAP requirements.

1. Separate Household Status for Spouses Not Living

Together (§ 253.6(a)(1))

The Department proposes removing the regulatory prohibition at current 7 CFR 253.6(a)(1) on granting separate household status to spouses living apart. Current regulations require that separate household status cannot be granted to spouses not living together. SNAP regulations at 7 CFR 273.1(b)(1) currently provide flexibility for spouses that are not living together to be considered separate households. The current

prohibition in FDPIR presents a barrier to access for individuals who are legally married but not living in the same household. Individuals in this situation can prove they are living apart, but because they are legally married, regardless of their living situation, they cannot receive separate household status under current regulations. If one of the individuals is receiving FDPIR or SNAP benefits, then the other individual cannot receive FDPIR as a separate household. The proposed provision would establish parity between FDPIR and SNAP regarding the treatment of household composition for spouses.

2. Minor Children Living Apart from Parents (§ 253.6(a)(1))

The Department also proposes further clarifying requirements for determining parental control of minor children for the purposes of determining the composition of the household and household eligibility. Current FDPIR regulations at 7 CFR 253.6(a)(1) include language that children under the age of 18 under the parental control of a member of the household cannot receive separate household status. More clarity is needed to account for situations involving minor children living apart from their parents, for example when a child is living with their grandparents.

A new section at proposed 7 CFR 253.6(a)(4) would use the language found in SNAP regulations at 7 CFR 273.1(b)(1)(iii), which clarifies that a child is considered under parental control for purposes of this provision if they are financially or otherwise dependent on a member of that household, for example, a grandparent. This proposed change would also improve consistency between FDPIR and SNAP requirements to ensure that both programs only certify a child if the adult household member has “parental” control over the child.

3. Removal of California SSI Cash-Out Reference (§ 253.6(a)(2)(ii))

The Department additionally proposes removing reference to Supplemental Security Income (SSI) cash-out at 7 CFR 253.6(a)(2)(ii), as this provision is no longer applicable. The California Assembly Bill (AB) 1811 reversed the cash-out policy, resulting in SSI recipients in California becoming eligible for SNAP or FDPIR benefits provided all other eligibility criteria are met.⁶ The bill was enrolled and enacted in June 2018. This change was effective on June 1, 2019.

4. Revisions to Shelter/Utility Deductions (§ 253.6(e)(5))

Currently, FDPIR's base income eligibility thresholds are set using 100 percent of the U.S. Federal Poverty Guidelines published by HHS and increased by the SNAP standard deduction by household size. The thresholds are updated annually by October 1. FDPIR regulations at 7 CFR 253.6(e) provide for income deductions, in recognition of expenses which impact the amount of household income available for food purchases. These income deductions may assist applicants in meeting income standards for the program. Under current FDPIR regulations at 7 CFR 253.6(e), income deductions include an earned income deduction, dependent care deduction, child support deduction, medical expense deduction, and shelter/utility standard deduction. FDPIR fiscal year 2023 income eligibility standards and a full list of deductions are provided on the FNS website at <https://www.fns.usda.gov/fdpi/net-monthly-income-standards>.

The Department proposes revising 7 CFR 253.6(e)(5) to amend the process FNS uses to update the shelter/utility standard deduction each year. The current method was finalized in the 2013 Final Rule: *Food Distribution Program on Indian Reservations: Income Deductions and Resource Eligibility*.⁷ Under current regulations, households that incur at

⁶ California State Legislature, *Assembly Bill No. 1811 Human Services Omnibus (2017-2018)*. Accessed 23 January, 2023. Available at internet site: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1811

⁷ USDA Food and Nutrition Service, *Final Rule: The Food Distribution Program on Indian Reservations: Income Deductions and Resource Eligibility* (78 FR 52827),

least one monthly shelter and/or utility expense permitted under SNAP at 7 CFR 273.9(d)(6)(ii) may receive the deduction. Each year, FNS establishes the regional shelter/utility standard deduction amounts by taking the average SNAP shelter deduction in each FDPIR State in the region weighted by FDPIR participation in the State. As the SNAP data used lags by two years, the weighted values are indexed by inflation to the current year and then rounded to the nearest \$50 increment. For fiscal year 2023, the FDPIR Regional shelter/utility deductions are as follows:

Table 1.1

FY 2023 FDPIR Standard Shelter/Utility Expense Deductions

Region	States Currently with FDPIR Programs	Shelter/Utility Deduction
Northeast/Midwest	Maine, Michigan, Minnesota, New York, Wisconsin	\$500
Southeast/Southwest	Arizona, Mississippi, New Mexico, North Carolina, Oklahoma, Texas, Utah	\$400
Mountain Plains	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Wyoming	\$550
West	Alaska, California, Idaho, Nevada, Oregon, Washington	\$450

*If the geographic boundaries of an Indian reservation extend to more than one region per the identified regional groupings above, then a qualifying household has the option to receive the appropriate shelter/utility expense deduction amount for the State in which the household resides or the State agency's central administrative office is located.

Tribal leaders and NAFDPIR have expressed concern that the current approach does not reflect current conditions and does not address the variances in Indian Country. In addition, it has been expressed that in times of historically high inflation and household costs, there may be households that are slightly over the FDPIR income standards but due to high costs of shelter and utility expenses, a household may be food insecure.

Accessed 23 January 2023. Available at internet site:
<https://www.federalregister.gov/documents/2013/08/27/2013-20844/food-distribution-program-on-indian-reservations-income-deductions-and-resource-eligibility>

The Department remains committed to working with Tribal leaders and NAFDPIR to continue to discuss FDPIR income eligibility and program access. The Department proposes updating the FDPIR shelter/utility standard deduction to allow FDPIR households to use actual expenses up to 50 percent of net income, and to increase the standard deduction option to the level of the SNAP maximum shelter deduction instead of the current Regional standard deduction.

Under the newly proposed standard deduction method, when the SNAP excess shelter deduction is updated annually for the next fiscal year (FY), per 7 CFR 273.9(d)(6)(ii), the maximum monthly excess shelter deduction limit established for the area would be used as the FDPIR shelter/utility standard deduction amount. For example, in FY 2023, the SNAP maximum shelter deduction amount for the 48 contiguous States and the District of Columbia is \$624 and Alaska is \$996. Under this proposal, these amounts would be used for the standard deduction for households that elect to use this amount; or the household could choose to provide actual expenses up to 50 percent of net income. The shelter/utility standard deduction amounts would be updated annually by October 1. See the preamble discussion applicable to verification procedures (§ 253.7), where the Department proposes verification requirements for applicants and participants seeking to provide actual shelter and utility expenses to receive a shelter/utility deduction of up to 50 percent of net income.

In addition to responding to concerns raised by Tribal leaders at recent Consultations, as well as NAFDPIR and FDPIR ITOs and State agencies, the Department believes the proposed amendment to the shelter/utility standard deduction would further promote simplicity and efficiency in program administration, relieving burden on FDPIR administering agencies.

Additionally, the Department proposes a change to § 253.6(e)(1) to indicate that under the earned income deduction, twenty percent should be deducted from “gross earned

income,” instead of the previous “earned income,” which would increase clarity in this section.

5. Request for Public Comments: FDPIR Income Standards (§ 253.6(d))

As provided in the preamble discussion at § 253.6(e)(5), the FDPIR base income eligibility thresholds are set using 100 percent of the U.S. Federal Poverty Guidelines published by the U.S. Department of Health and Human Services (HHS) and increased by the SNAP standard deduction by household size. The Department is soliciting comments regarding whether further changes should be made to FDPIR income standards to increase program access and parity with SNAP. The Department is seeking feedback from FDPIR ITOs and State agencies to inform potential future proposals on alternative eligibility thresholds for FDPIR, including feedback on the following questions:

1. Are there data sources in addition to HHS data that the Department should consider when determining income eligibility standards for FDPIR?
2. Should the Department consider use of a gross income eligibility requirement for FDPIR e.g., 185 percent of the U.S. Federal Poverty Guidelines published annually by HHS, without application of any income deductions?

USDA FNS appreciates and values your thoughtful and responsive replies to these questions. Your feedback is essential to helping FNS ensure the administration of FDPIR is as effective and efficient as possible. Moving forward, FNS will continue to prioritize Tribal consultation and feedback from FDPIR partners on a wide range of issues related to FDPIR, as it considers ways to improve an already successful program.

vi. Verification Procedures (§ 253.7)

The Department proposes a technical update to the verification requirements for the shelter/utility standard deduction to provide verification for all expenses if actuals are used. Furthermore, the Department proposes updating the threshold for which an ITO or

State agency must verify a change in income from \$50 to \$100 at the time of recertification. The 2013 Final Rule, *The Food Distribution Program on Indian Reservations: Income Deductions and Resource Eligibility*, included a provision that households must report an increase in gross monthly income of more than \$100 within 10 calendar days of when the change becomes known to the household.⁸ As an oversight, the update was not applied to the recertification verification at 253.7(a)(6)(v). This proposed update would align the required household income reporting changes that require notification from the household.

vii. USDA Foods Inventory Management (§ 253.10)

The proposed technical update would make this section consistent with the 2016 Final Rule, *Requirements for the Distribution and Control of Donated Foods – The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014*.⁹ The Department proposes removing current FDPIR regulatory requirements at 7 CFR 253.10(c)(1)-(6) and replacing them with a reference to follow storage and inventory management regulations listed at 7 CFR 250.12 and 250.14. This proposal would ensure that FDPIR regulations remain consistent with 7 CFR 250. Additionally, the Department proposes moving 7 CFR 253.10(c)(7) through (17) to 253.10(d), as these citations are applicable to distribution procedures.

⁸ USDA Food and Nutrition Service, *Final Rule: The Food Distribution Program on Indian Reservations: Income Deductions and Resource Eligibility* (78 FR 52827), Accessed 23 January 2023. Available at internet site: <https://www.federalregister.gov/documents/2013/08/27/2013-20844/food-distribution-program-on-indian-reservations-income-deductions-and-resource-eligibility>

⁹ USDA Food and Nutrition Service, *Final Rule: Requirements for the Distribution and Control of Donated Foods – The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085). Accessed 23 January 2023. Available at internet site: <https://www.federalregister.gov/documents/2016/04/19/2016-08639/requirements-for-the-distribution-and-control-of-donated-foods-the-emergency-food-assistance-program>

viii. Soliciting Tribal stakeholder feedback on the FDPIR

administrative funding methodology

While not proposing changes in this rulemaking, the Department is soliciting comments on the method that is used to allocate administrative funding to FDPIR administering agencies, which include ITOs and State agencies that have an agreement with FNS to administer FDPIR. This solicitation of comments is intended to gather FDPIR administering agency feedback on the existing administrative funding methodology, including the budget negotiation process, to frame any necessary future discussions and changes to the methodology. If FNS determines that comments received are sufficient to justify a change to the administrative funding methodology, FNS will use feedback received to inform next steps.

Currently, administrative funds are allocated to FNS Regional Offices based on a funding formula established in program regulations at 7 CFR 253.11(a). To the extent practicable, administrative funds are allocated to FNS Regional Offices in the following manner: 1) sixty five percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and 2) thirty-five percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally. FDPIR administrative funds are then allocated to administering agencies through a budget process conducted by FNS Regional Offices. ITOs and State agencies are entitled to FDPIR administrative funding to administer the program. Through this process, ITOs and State agencies submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. To the extent that funding levels permit, the FNS Regional Office allocates to each State agency administrative funds necessary to cover no less than 80 percent of

approved administrative costs, with the remainder matched by the ITO/State agency (20 percent) unless the State agency/ITO provides sufficient justification to match less.

The current funding methodology was established based on feedback from a FDPIR Funding Methodology Workgroup, consisting of FNS staff and representatives from FDPIR administering agencies. The Workgroup developed proposals for a new administrative funding allocation methodology for FDPIR, and FNS formally consulted with Tribal leaders on the funding methodology before implementation. The current funding methodology was implemented in FY 2008 on an interim basis and codified in FDPIR regulations in 2012.

Notably, there have been significant changes in FDPIR administrative funding levels and statutory requirements over the last few years. Until FY 2019, FDPIR administrative funds were only available to FDPIR ITOs and State agencies for obligation for one fiscal year. Importantly, Section 4003 of the Agriculture Improvement Act of 2018 (Pub. L. 115-134, the 2018 Farm Bill) required all FDPIR administrative grants to remain available for obligation at the ITO and State agency level for a period of two fiscal years. This statutory change improved program administration by allowing administering agencies to plan operations and use funds more flexibly and effectively from one fiscal year to the next. This statutory change allowing for carryover of unspent administrative grants at the FDPIR ITO and State agency levels has coincided with an increase in the amount of FDPIR administrative funding available nationally in recent years. In FY 2018, Congress appropriated \$48.0 million for FDPIR ITO and State agency administrative expenses. By FY 2022, appropriated funding for ITO and State agency administrative grants had increased to \$62.669 million, of which \$4 million was dedicated to FDPIR nutrition education activities (an increase from the previous annual appropriation of \$250,000 for nutrition education). In addition to the annual, national administrative funding increases, in 2020, \$62 million was made available to FDPIR

administering agencies under the Coronavirus Aid, Relief and Economic Security Act (PUB. L. 116-396, CARES Act) for FDPIR facilities improvements, equipment upgrades, and supplemental administrative funding.

Based on these key changes in the program since the current funding methodology was established, FNS is seeking comments on whether the current process adequately meets the needs of the program. FNS specifically requests comments from FDPIR administering agencies on the following questions:

1. With the advent of two-year FDPIR administrative funding, and given the increase in funding in recent years, does the current methodology provide your organization with adequate funding to meet its administrative needs?
2. Are there aspects of the current funding methodology that could be improved, and if so, how?
3. Specifically, please provide comment on the effectiveness of the current regional allocation and budget negotiation process and if modifications or another model could better serve Indian Tribal Organization needs.

USDA FNS appreciates and values your thoughtful and responsive replies to all questions. Your feedback is essential to helping FNS ensure the administration of FDPIR is as equitable as possible. Moving forward, USDA FNS will continue to prioritize Tribal consultation and feedback from FDPIR partners on a wide range of issues related to FDPIR, as it considers ways to improve an already successful program. USDA welcomes your feedback on how FNS could seek further input from the FDPIR community on this important topic outside of this rulemaking.

ix. Establishment of Administrative Waiver Authority in FDPIR (§ 253.12)

Tribal leaders have expressed concern regarding the lack of parity between FDPIR and SNAP with respect to FNS' ability to waive or modify specific regulatory requirements

in certain situations. The Department proposes adding an amendment to current FDPIR regulations that would allow FNS to waive or modify specific administrative requirements contained in this part, under similar processes, for similar amounts of time, and in similar situations as outlined in SNAP regulations at 7 CFR 272.3(c). This proposed provision is intended to mirror SNAP waiver requirements but would be separate and distinct from SNAP waiver authority. Under this proposed provision, FDPIR ITOs and State agencies would be able to request waivers of specific regulatory requirements. This process would require State agencies and ITOs to provide compelling justification for each waiver request submitted. FNS envisions the final regulations would outline, among other potential stipulations, that waiver approvals would only be issued when (1) the specific regulatory provision cannot be implemented due to extraordinary temporary situations, (2) FNS determines that the waiver would result in a more effective and efficient administration of the program, or (3) unique geographic conditions within the geographic area served by the administering agency preclude effective implementation of the specific regulatory provision and require an alternative procedure. FNS seeks comment on these specific stipulations and other considerations. If the situation that necessitates the waiver is widely applicable to all FDPIR ITOs and State agencies, FNS could choose to issue nationwide waivers of specific administrative requirements if determined to be necessary. Waivers would not be issued in situations where the waiver would be inconsistent with provisions of the Food and Nutrition Act of 2008, as amended (Pub. L. 95–113).

e. Administration of the Food Distribution Program for Indian Households
in Oklahoma (7 CFR 254)

Part 254 addresses circumstances unique to distributing FDPIR to households residing in FNS services areas in Oklahoma. The Department is proposing to make conforming changes to part 254 to align with updates made to part 253. The proposed technical

updates to part 254 would include replacing the outdated term “commodities” with “USDA Foods” to further align the program with the definition of “USDA Foods” in 7 CFR 250. The term commodities is no longer commonly used and has been replaced by “USDA Foods.” In accordance with the changes proposed in d. Food Distribution on Indian Reservations, ii. Removal of Urban Place Definition (§ 253.2 and § 253.5), the Department proposes removing the references to the urban place definition and related terminology and the requirement to provide justification to FNS.

Section 2: Implementation

The Department proposes that State agencies, ITOs, and other affected parties must implement the provisions of this rule no later than 60 days after the date of publication of the final rule in the Federal Register. The Department seeks comments on the type and scope of administrative burden that may be associated with implementing the provisions in this proposed rule in this manner.

Section 3: Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, as amended, OMB’s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and,

therefore, subject to OMB review. OMB determined this proposed rule to be not significant under E.O. 12866, as amended.

Regulatory Impact Analysis

OMB designated this rule as not significant. Therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

While there may be some burden/impact on some small eligible recipient agencies in TEFAP because of the proposed requirement to report participation in TEFAP, the impact is not significant because these entities are already collecting this information as a part of their normal program operations under existing regulatory requirements.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. § 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory

actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

Program names are listed in the Catalog of Federal Domestic Assistance under Numbers 10.565 (CSFP), 10.569 (TEFAP), 10.568 (TEFAP Administrative Costs), 10.567 (FDPIR), and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-004, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants based on age, race, color, national origin, sex, or disability. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the proposed rule, including an analysis of participant data and provisions contained in the proposed rule. The CRIA outlines outreach, mitigation, and monitoring strategies to lessen any possible civil rights impacts. The CRIA concludes by stating FNS believes that the promulgation of this proposed rule would impact State agencies, Indian Tribal Organizations (ITOs), local agencies and food banks, and participants. The proposed rule aims to improve access and parity for participants in the food distribution programs.

However, FNS finds that the implementation of the outreach, mitigation, and monitoring strategies may lessen any impacts on these entities. If deemed necessary, FNS would propose further mitigation and outreach strategies to alleviate impacts that may result from the implementation of the final rule.

Executive Order 13175

Executive Order 13175 requires federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On November 8, 2022, December 6 and 13, 2022, February 22, 2023, and June 27, 2023, FNS provided the opportunity for Tribal consultation on the proposed rule and received substantive feedback from several Tribal leaders which were taken into consideration during the development of the proposed rule. Notes from these consultations are available at <https://www.usda.gov/tribalrelations/tribal-consultations>. Once the proposed rule is published in the Federal Register, FNS will encourage stakeholders representing Indian Tribal Organizations to provide input on whether the proposed rule poses any adverse Tribal implications. If a Tribe requests additional consultation in the future, FNS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided. FNS is unaware of any current Tribal laws that could be in conflict with this proposed rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. FNS is seeking a new OMB Control Number for new, existing, and changing provisions in this rule subject to the Paperwork Reduction Act (PRA) of 1995. Once OMB approves the new information collection request burden associated with this rulemaking, FNS will submit a request to merge the newly-approved burden hours into OMB Control Number 0584-0293, Food Distribution Programs, the existing collection to which they pertain, and will publish a Federal Register Notice announcing OMB's subsequent approval. Once the merge is approved, the newly assigned OMB control number can then be discontinued.

Other unaffected burden inventories for this proposed rule have been approved under OMB Control Numbers 0584-0055 Child and Adult Care Food Program (expiration date August 31, 2025), 0584-0067 State Administrative Expense (SAE) Funds (expiration date January 31, 2026), and 0584-0594 Food Programs Reporting System (expiration date July 31, 2023).

Comments on this proposed rule must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments may be sent to: Polly Fairfield, Food and Nutrition Service, U.S Department of Agriculture, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314. Comments may also be submitted via email to Polly Fairfield (Polly.Fairfield@usda.gov). Comments will also be accepted through the Federal eRulemaking Portal. Go to [https:// www.regulations.gov](https://www.regulations.gov) and follow the online instructions for submitting comments electronically.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Food Distribution Programs Improving Access and Parity—Reporting and Recordkeeping Burden

OMB Number: 0584-NEW

Expiration Date: Not Yet Determined

Type of Request: New collection.

Abstract:

This is a new information collection. The Department proposes new information collections to improve understanding about the quantities and types of USDA Foods being provided nationally and within States during disasters and situations of distress, the organizations providing USDA Foods to eligible households through TEFAP and their locations for a clearer understanding of service coverage, and to increase knowledge about the number of persons served by TEFAP distribution of USDA Foods for home consumption. Below is summary of the changes proposed by the rulemaking and the accompanying reporting and recordkeeping requirements.

Sections 250.69(d)(3) and 250.70(d)(3) reporting and recordkeeping requirements.

During typical Presidentially declared emergencies, State distributing agencies submit FNS Form FNS-292A, Report of Commodity Distribution for Disaster Relief, to FNS 45 days after the termination of disaster assistance to report the types and amounts of USDA Foods used in disaster assistance. The length of the COVID-19 pandemic and the quantity of USDA Foods distributed presented a challenge for USDA's ability to track USDA Foods inventories available nationally and within States, and USDA and State distributing agencies' ability to source and distribute foods to meet the needs of the public with reporting limited to after the end of the disaster assistance period. To improve USDA's ability to mobilize foods to areas affected by disasters, the Department proposes requiring a new weekly report which State distributing agencies must complete if disaster household distribution persists for longer than 14 calendar days. Weekly tracking of USDA Foods served via disaster household distribution, beginning 14 days after the start of distribution, would improve USDA's and State distributing agencies' understanding of the quantity and types of USDA Foods available for emergency response and facilitate USDA's efforts to replace USDA Foods used in disaster response. The proposed weekly reporting would also require State distributing agencies to report the total number of individuals receiving assistance through disaster household distributions, which would provide USDA with an improved understanding of how many affected individuals are receiving assistance. The Department estimates that 5 State, local, or Tribal government respondents would complete 23 responses in a year, with each response taking 1 hour to complete. The proposed total annual burden is estimated to be 115.00 hours, annually.

Section 251.4(l) Public posting of availability of USDA Foods. The Department proposes requiring TEFAP State agencies to post the name, address, and a contact

telephone number for all eligible recipient agencies which distribute USDA Foods to other eligible recipient agencies, to eligible households for home consumption, or in prepared meals to publicly available websites. The Department proposes requiring State agencies to update this information annually. Requiring State agencies to report complete eligible recipient agency information on publicly accessible websites would help eligible households understand where they may receive benefits, and which eligible recipient agencies they may contact for additional program information. The Department estimates that 54 State agency respondents would complete 1 response each year, with each response taking 8 hours to complete. The proposed total annual burden is estimated to be 432.00 hours, annually.

Section 251.10(b)(3) report of eligible recipient agency list. The Department proposes to require TEFAP State agencies report the name, address, and a contact telephone number for all eligible recipient agencies which distribute USDA Foods to other eligible recipient agencies, to eligible households for home consumption, or in prepared meals to FNS on an annual basis so that FNS may understand where TEFAP services are offered and the landscape of eligible recipient agencies receiving USDA Foods nationally. This would allow FNS to better understand areas where there may be gaps in service, and work with States to eliminate these gaps. The Department estimates that 54 State agency respondents would complete 1 response each year, with each response taking 2 hours to complete. The proposed total annual burden is estimated to be 108.00 hours, annually.

Section 251.10(b)(4) Recipients of USDA Foods for home consumption. Existing regulations at § 251.10(a)(3) require each distribution site to collect and maintain on record the number of persons in each household receiving USDA Foods for home

consumption, as well as other household information. The Department proposes adding a new requirement for State agencies to report the total number of persons receiving USDA Foods for home consumption. State agencies would be required to report the monthly number of individuals receiving USDA Foods in this manner on a quarterly basis. This report will help the Department understand how many households participate in TEFAP through the distribution of USDA Foods for home consumption. The Department estimates that 54 State agencies will complete 4 responses annually, with each response taking 2 hours to complete. The proposed total annual burden is estimated to be 432.00 hours, annually.

In addition to the above reporting requirements, FNS has reviewed all information collections associated with 7 CFR Parts 240, 247, 250, 251, 253, and 254 and determined that no additional changes are needed to existing reporting and recordkeeping requirements. Those adjustments result in a net burden increase of 1,087 hours for 0584-NEW. After OMB has approved the information collection requirements submitted in conjunction with the final rule, FNS will merge the requirements and their burden into the existing program information collection request to which they pertain: OMB Control Number 0584-0293, Food Distribution Programs. This would result in a net burden increase of 1,087 hours for 0584-0293.

The table below summarizes the changes to all burden numbers associated with 7 CFR Parts 240, 247, 250, 251, 253, and 254. For additional details, see the information collection material included in the docket to this rule.

Reporting					
Affected Public	Estimated Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Estimated Total Hours per Response	Estimated Total Burden
State, Local, and Tribal Governments	26,585	8.78	233,499.24	0.26	60,431.75
Private For Profit	4,013	213.98	858,787.33	0.03	23,985.88
Private Not for Profit	840	3.86	3,240.00	0.19	614.50
Individual	725,700.00	1.97	1,428,200.00	0.25	361,650.00

Total Burden Estimates	757,138.33	3.33	2,523,726.57	0.18	446,682.13
Recordkeeping					
Affected Public	Estimated Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Estimated Total Hours per Response	Estimated Total Burden
State, Local, and Tribal Governments	51,611.00	9.14	471,683.46	0.08	35,491.18
Private For Profit	4,775	216.62	1,034,429.00	0.06	62,671.72
Private Not for Profit	3,079	4.15	12,782.00	52.63	672,662.29
Individual	0	0.00	0.00	0.00	0.00
Total Estimated Recordkeeping Burden	59,465.33	25.54	1,518,894.46	0.51	770,825.19
Total of Reporting and Recordkeeping					
Burden Type	Estimated Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Estimated Total Hours per Response	Estimated Total Burden
Reporting	757,138.33	3.33	2,523,726.57	0.18	446,682.13
Recordkeeping	59,465.33	25.54	1,518,894.46	0.51	770,825.19
Total	757,138.33	5.34	4,042,621.03	0.30	1,217,507.32

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 247

Aged, Agricultural commodities, Food assistance programs, Public assistance programs

7 CFR Part 250

Administrative practice and procedure, Aged, Disaster assistance, Food assistance programs, Grant programs-social programs, Indians, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 251

Food assistance programs, Grant programs-social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 253

Administrative practice and procedure, Agricultural commodities, Food assistance programs, Grant programs-social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Food assistance programs, Grant programs-social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, FNS proposes to amend 7 CFR parts 247, 250, 251, 253, and 254 to read as follows:

PART 247 – COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. The authority citation for part 247 continues to read as follows:

Authority Sec. 5, Pub. L. 93-86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97-98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98-92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99-198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100-202; sec. 1771(a), Pub. L. 101-624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104-127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107-171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110-246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113-79, 7 U.S.C. 612c note).

2. Amend § 247.1 by:

- a. Removing the definitions of “Commodities” and “Elderly persons”;
- b. Revising the definition of “Proxy”; and
- c. Adding a definition of “USDA Foods”.

The addition and revision read as follows:

§ 247.1 Definitions.

* * * * *

Proxy means any person designated by a participant or caretaker to obtain supplemental foods on behalf of the participant.

* * * * *

USDA Foods means foods purchased by USDA to supplement the diets of CSFP participants, also referred to as donated foods.

* * * * *

§ 247.2 [Amended]

3. In § 247.2 amend paragraph (a) by:

- a. In the first sentence, removing the term “elderly persons” and adding in its place the term “participants”; and
- b. Removing the second sentence.

4. Amend § 247.5 by:

- a. Revising paragraphs (b)(14) and (15) and adding (b)(16) and (17); and
- b. Revising paragraph (c)(7).

The revisions and additions read as follows:

§ 247.5 State and local agency responsibilities.

* * * * *

(b) * * *

(14) Providing guidance to local agencies, as needed;

(15) Ensuring that program participation does not exceed the State agency's caseload allocation on an average monthly basis; and

(16) Making publicly available a list of all CSFP distribution sites, including local agencies and agencies operating under an agreement with a local agency, on a publicly available Internet webpage. The State agency must post the name, address, and telephone number for each site. The list must be updated, at a minimum, on an annual basis.

(17) Posting the State Plan that is currently in use on a publicly available Internet webpage.

(c) * * *

(7) Meeting the special needs of homebound participants, to the extent possible; and

* * * * *

5. Amend § 247.6 by revising the last sentence of paragraph (a) and paragraphs (c)(5), (c)(10), (11), and (12), and adding (c)(13) to read as follows:

§ 247.6 State Plan.

(a) * * * A copy of the State Plan must be kept on file at the State agency and must also be posted on a publicly available Internet webpage for public inspection.

* * * * *

(c) * * *

(5) A description of plans for conducting outreach to participants;

* * * * *

(10) A description of the means by which the State will meet the needs of homebound participants;

(11) Copies of all agreements entered into by the State agency;

(12) The length of the State agency's certification period; and

(13) A description of the process in place to verify the identity of participants before receipt of USDA Foods.

* * * * *

6. Amend § 247.9 by revising paragraphs (b), (c), (d)(2) introductory text and (d)(3) to read as follows:

§ 247.9 Eligibility requirements.

* * * * *

(b) *What are the income eligibility requirements for CSFP applicants?* The State agency must use a household income limit at or below 150 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). Participants in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements contained in this part). However, participants certified before September 17, 1986 (*i.e.*, under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

(c) *When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the Federal Poverty Income Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 150 percent and 100 percent of the U.S. Federal Poverty Guidelines published annually by HHS. The memorandum will reflect the annual adjustments to the Federal Poverty Income Guidelines issued by the Department of Health and Human Services. The State agency must implement the adjusted guidelines immediately upon receipt of the memorandum.

(d) * * *

(2) The State agency may exclude from consideration the following sources of income:

* * * * *

(3) The State agency must exclude from consideration all income sources excluded by legislation. FNS will notify State agencies of forms of income excluded by statute through program policy memoranda. The income sources which must be excluded from consideration as income include, but are not limited to:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, sec. 216, 42 U.S.C. 4636);

(ii) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(iii) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95-510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, sec. 6, 25 U.S.C. 459e);

(v) Payments received under the Job Training Partnership Act (Pub. L. 97-300, sec. 142(b), 29 U.S.C. 1552(b));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, sec. 6);

(vii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 100-241, sec. 15, 43 U.S.C. sec. 1626(c));

(viii) The value of assistance to children or their families under the National School Lunch Act, as amended (Pub. L. 94-105, sec. 9(d), 42 U.S.C. sec. 1760(e)), the Child Nutrition Act of 1966 (Pub. L. 89-642, sec. 11(b), 42 U.S.C. sec. 1780(b)), and the Food and Nutrition Act of 2008 (Pub. L. 95-113, sec. 1301, 7 U.S.C. sec. 2017(b));

(ix) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433, sec. 2, 25 U.S.C. 609c–1);

(x) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c));

(xi) Payments under the Low-income Home Energy Assistance Act, as amended (Pub. L. 99–125, sec. 504(c), 42 U.S.C. sec. 8624(f));

(xii) Student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, which is used for costs described in section 472 (1) and (2) of that Act (Pub. L. 99–498, section 479B, 20 U.S.C. 1087uu). The specified costs set forth in section 472 (1) and (2) of the Higher Education Act are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution. The specified costs set forth in section 472 (1) and (2) of the Act are those costs which are related to the costs of attendance at the educational institution and do not include room and board and dependent care expenses;

(xiii) Payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Pub. L. 100–707, sec. 105(i), 42 U.S.C. sec. 5155(d));

(xiv) Effective July 1, 1991, payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, sec. 501, 20 U.S.C. sec. 2466d);

(xv) Payments pursuant to the Agent Orange Compensation Exclusion Act (Pub. L. 101–201, sec. 1);

(xvi) Payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988 (Pub. L. 100–383, sec. 105(f)(2), 50 App. U.S.C. sec. 1989b–4(f)(2));

(xvii) Value of any child care payments made under section 402(g)(1)(E) of the Social Security Act, as amended by the Family Support Act (Pub. L. 100–485, sec. 301, 42 U.S.C. sec. 602 (g)(1)(E));

(xviii) Value of any “at-risk” block grant child care payments made under section 5081 of Pub. L. 101–508, which amended section 402(i) of the Social Security Act;

(xix) Value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended (Pub. L. 102–586, Sec. 8(b)), 42 U.S.C. 9858q);

(xx) Mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended (Pub. L. 99–576, sec. 303(a)(1), 38 U.S.C. sec. 1411 (b));

(xxi) Payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of \$2,000 (Pub. L. 98–500, sec. 8, 25 U.S.C. sec. 2307);

(xxii) Payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80 percent of the median income of the area (Pub. L. 101–625, sec. 522(i)(4), 42 U.S.C. sec. 1437f nt);

(xxiii) Payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (Pub. L. 100–242, sec. 126(c)(5)(A), 25 U.S.C. sec. 2307);

(xxiv) Payments received under the Sac and Fox Indian claims agreement (Pub. L. 94–189, sec. 6);

(xxv) Payments received under the Judgment Award Authorization Act, as amended (Pub. L. 97–458, sec. 4, 25 U.S.C. sec. 1407 and Pub. L. 98–64, sec. 2(b), 25 U.S.C. sec. 117b(b));

(xxvi) Payments for the relocation assistance of members of Navajo and Hopi Tribes (Pub. L. 93–531, sec. 22, 22 U.S.C. sec. 640d-21);

(xxvii) Payments to the Turtle Mountain Band of Chippewas, Arizona (Pub. L. 97–403, sec. 9);

(xxviii) Payments to the Blackfeet, Grosventre, and Assiniboine tribes (Montana) and the Papago (Arizona) (Pub. L. 97–408, sec. 8(d));

(xxiv) Payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana) (Pub. L. 98–124, sec. 5);

(xxx) Payments to the Red Lake Band of Chippewas (Pub. L. 98–123, sec. 3);

(xxxi) Payments received under the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Pub. L. 99–346, sec. 6(b)(2));

(xxxii) Payments to the Chippewas of Mississippi (Pub. L. 99–377, sec. 4(b));

(xxxiii) Payments received by members of the Armed Forces and their families under the Family Supplemental Subsistence Allowance from the Department of Defense (Pub. L. 109–163, sec. 608); and

(xxxiv) Payments received by property owners under the National Flood Insurance Program (Pub. L. 109–64).

(xxxv) Combat pay received by the household member under Chapter 5 of Title 37 or as otherwise designated by the Secretary.

* * * * *

7. Amend § 247.10 by revising the section heading and paragraph (b) to read as follows:

§ 247.10 Distribution and use of USDA Foods in CSFP.

* * * * *

(b) *What must the local agency do to ensure that USDA Foods are distributed only to CSFP participants?* The local agency must have a process in place, in accordance with State agency requirements, to verify the identity of participants or the participant's proxy before distributing USDA Foods to that person.

* * * * *

8. Amend § 247.14 by revising paragraphs (a)(2) and (3) and adding (a)(4) to read as follows:

§ 247.14 Other public assistance programs.

(a) * * *

(2) Medical assistance provided under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including medical assistance provided to a qualified Medicare beneficiary (42 U.S.C. 1395(p) and 1396d(5));

(3) The Supplemental Nutrition Assistance Program (7 U.S.C. 2011 et seq.); and

(4) The Senior Farmers' Market Nutrition Program (7 U.S.C. 3007 et seq.).

9. Amend § 247.21 by revising the first sentence of paragraph (a)(3) to read as follows:

§ 247.21 Caseload assignment.

* * * * *

(a) * * *

(3) New caseload. Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve participants, as requested in the State Plan. * * *

* * * * *

10. Amend § 247.28 by revising the section heading to read as follows:

§ 247.28 Storage and inventory of USDA Foods.

* * * * *

11. Amend § 247.37(a) by revising the last sentence to read as follows:

§ 247.37 Civil Rights Requirements.

(a) * * * State and local agencies must ensure that the program is operated in accordance with the most up-to-date USDA nondiscrimination statement.

PART 247 [Amended]

12. In addition to the amendments set forth above, amend part 247 by removing the word “commodities” wherever it appears and adding, in its place, the words “USDA Foods”.

PART 250 - DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

13. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a-1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

14. Revise § 250.69 to read as follows:

§ 250.69 Disasters.

(a) *Use of USDA Foods to provide congregate meals.* The distributing agency may provide USDA Foods from current inventories, either at the distributing or recipient agency level, to a disaster organization (as defined in § 250.2), for use in providing congregate meals to persons in need of food assistance as a result of a Presidentially declared disaster or emergency (hereinafter referred to collectively as a “disaster”). FNS approval is not required for such use.

(1) *Notification of congregate meals activity to FNS.* Prior to using USDA Foods for congregate meals under this section, the distributing agency must notify FNS that such assistance is to be provided, and the period of time that it is expected to be needed. The distributing agency may extend such period of assistance as needs dictate but must notify FNS of such extension.

(2) *Selection of disaster organizations for disaster congregate meal service by the distributing agency.* Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to FNS approval as described in paragraph (a)(1) of this section. Before distribution of USDA Foods to a disaster organization for congregate meal service, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance. A disaster organization's application must be submitted to the distributing agency in written form. The disaster organization's application must, to the extent possible, include the following information at a minimum:

- (i) A description of the disaster situation;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;
- (iv) The quantity and types of USDA Foods needed; and

(v) The name, number and location of sites where USDA Foods are to be used, to the extent that such information is known.

(3) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use USDA Foods to provide meals to any emergency relief workers at the congregate feeding site who are directly engaged in providing relief assistance.

(b) *Use of USDA Foods for distribution to households.* Subject to FNS approval, the distributing agency may provide USDA Foods from current inventories in accordance with paragraph (c) of this section, either at the distributing or recipient agency level, to a disaster organization, for distribution to households in need of food assistance because of a disaster. Once approved, such distribution may continue for the period that FNS has determined to be necessary to meet the needs of such households. Distributing agencies may request an extension of the distribution period, subject to FNS approval.

(1) *FNS approval of disaster household distribution.* Before permitting the distribution of USDA Foods to a disaster organization for household distribution, the distributing agency must submit an application to FNS for review and approval. The distributing agency's application must, to the extent possible, include the following information:

- (i) A description of the disaster situation;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;
- (iv) The quantity and types of USDA Foods needed;
- (v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known;
- (vi) An explanation as to why household distribution is needed; and
- (vii) The method(s) of distribution available.

(2) *Selection of a disaster organization for disaster household distribution of USDA Foods.* Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to FNS approval as described in paragraph (b)(1) of this section. Before distribution of USDA Foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency either electronically or in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of USDA Foods to households.

(c) *Limitation on impacts to other programs.* Distributing agencies must ensure that the operation of disaster congregate meal service and/or disaster household distribution is not administered in lieu of regular program operations nor does it negatively impact the distribution of USDA Foods through other programs in the State.

(d) *Reporting and recordkeeping requirements.* The distributing agency must report the following to FNS:

(1) The number, names, and locations of sites where USDA Foods are used in congregate meals or household distribution as these sites are established.

(2) The types and amounts of USDA Foods from distributing or recipient agency storage facilities used in disaster assistance, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of disaster assistance. This form must also be used to request replacement of USDA Foods, in accordance with paragraph (e) of this section. The distributing agency must maintain records of reports and other information relating to disasters.

(3) If the distributing agency is operating disaster household distribution per 250.69(b), and the disaster household distribution continues past 14 calendar days, the

distributing agency must submit a weekly report to FNS, utilizing the format requested by FNS. This report must be submitted electronically each week that the disaster household distribution continues operation. Weekly reports must include:

- (i) The weekly distribution start and end dates;
- (ii) The total number of individual household members receiving assistance at all locations;
- (iii) Material identification codes for USDA Foods distributed;
- (iv) the USDA Foods description of the foods distributed; and
- (v) the total units of each food distributed.

(e) *Replacement of USDA Foods.* In order to ensure replacement of USDA Foods used in disasters, the distributing agency must submit to FNS a request for such replacement, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, within 45 days following the termination of disaster assistance. The distributing agency may request replacement of USDA Foods used from inventories in which USDA Foods are commingled with other foods (*i.e.*, at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received USDA Foods of the same type as the foods used during the year preceding the onset of the disaster assistance. FNS will replace such USDA Foods in the amounts used, or in the amount of like USDA Foods received during the preceding year, whichever is less.

(f) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting USDA Foods within the State, or from one State to another, for use in disasters, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency.

15. Revise § 250.70 to read as follows:

§ 250.70 Situations of distress.

(a) *Use of USDA Foods to provide congregate meals.* The distributing agency may provide USDA Foods from current inventories, either at the distributing or recipient agency level, to a disaster organization, for use in providing congregate meals to persons in need of food assistance because of a situation of distress, as this term is defined in § 250.2.

(1) *Notification of congregate meals activity to FNS.* If the situation of distress results from a natural event (e.g., a hurricane, flood, or snowstorm), congregate meals may be provided for a period not to exceed 30 days, without the need for FNS approval. However, the distributing agency must notify FNS that such assistance is to be provided. FNS approval must be obtained to permit such USDA Foods assistance for a period exceeding 30 days. If the situation of distress results from other than a natural event (e.g., an explosion), FNS approval is required to permit USDA Foods assistance for use in providing congregate meals for any period of time.

(2) *Selection of disaster organizations for disaster congregate meal service by the distributing agency.* Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to approval as described in paragraph (a)(1) of this section. Before distribution of USDA Foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of USDA Foods in a situation of distress that is not the result of a natural event. The disaster organization's application must, to the extent possible, include the following information:

- (i) A description of the situation of distress;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;

(iv) The quantity and types of USDA Foods needed; and

(v) The name, number and location of sites where USDA Foods are to be used, to the extent that such information is known.

(3) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use USDA Foods to provide meals to any emergency relief workers at the congregate feeding site that are directly engaged in providing relief assistance.

(b) *Use of USDA Foods for distribution to households.* The distributing agency must receive FNS approval to provide USDA Foods from current inventories in accordance with paragraph (c) of this section, either at the distributing or recipient agency level, to a disaster organization for distribution to households in need of food assistance because of a situation of distress. Such distribution may continue for the period of time that FNS determines necessary to meet the needs of such households. Before permitting the distribution of USDA Foods for household distribution, the distributing agency must submit an application to FNS for review and approval. The distributing agency's application must, to the extent possible, include the following information:

- (1) A description of the situation of distress;
- (2) The number of people requiring assistance;
- (3) The period of time for which USDA Foods are requested;
- (4) The quantity and types of USDA Foods needed;
- (5) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known;
- (6) An explanation as to why household distribution is needed; and
- (7) The method(s) of distribution available.

(c) *Limitation on impacts to other programs.* Distributing agencies must ensure that the operation of congregate meal service and/or disaster household distribution in

situations of distress is not administered in lieu of regular program operations nor does it negatively impact the distribution of USDA Foods through other programs in the State.

(d) *Reporting and recordkeeping requirements.* The distributing agency must report the following to FNS:

(1) The number, names, and locations of sites where USDA Foods are used in congregate meals or household distribution as these sites are established.

(2) The distributing agency must also report the types and amounts of USDA Foods from distributing or recipient agency storage facilities used in the situation of distress, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of assistance. This form must also be used to request replacement of USDA Foods, in accordance with paragraph (e) of this section. The distributing agency must maintain records of reports and other information relating to situations of distress.

(3) If the distributing agency is operating disaster household distribution per 250.70(b), and the disaster household distribution continues past 14 calendar days, the distributing agency must submit a weekly report to FNS, utilizing the format requested by FNS. This report must be submitted electronically each week that the disaster household distribution continues operation. Weekly reports must include:

- (i) The weekly distribution start and end dates;
- (ii) The total number of individual household members receiving assistance at all locations;
- (iii) Material identification codes for USDA Foods distributed;
- (iv) The USDA Foods description of the foods distributed; and
- (v) The total units of each food distributed.

(e) *Replacement of USDA Foods.* FNS will replace USDA Foods used in a situation of distress only to the extent that funds to provide for such replacement are

available. The distributing agency must submit to FNS a request for replacement of such USDA Foods, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of assistance. The distributing agency may request replacement of foods used from inventories in which USDA Foods are commingled with other foods (*i.e.*, at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received USDA Foods of the same type as the USDA Foods used during the year preceding the onset of the situation of distress. Subject to the availability of funds, FNS will replace such USDA Foods in the amounts used, or in the amount of like USDA Foods received during the preceding year, whichever is less.

(f) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting USDA Foods within the State, or from one State to another, for use in a situation of distress, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency to the extent that funds are available.

PART 251 – THE EMERGENCY FOOD ASSISTANCE PROGRAM

16. The authority citation for 7 CFR part 251 continues to read as follows:

Authority: 7 U.S.C. 7501-7516; 7 U.S.C. 2011-2036.

§ 251.2 [Amended]

17. Amend § 251.2(a) by removing the words “food commodities” and adding, in their place, the words “USDA Foods”.

18. Amend § 251.3 by revising paragraph (f) to read as follows:

§ 251.3 Definitions.

* * * * *

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food to food pantries, soup kitchens,

hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

* * * * *

19. Amend § 251.4 by revising the section heading and paragraphs (f)(3) and (k), and adding paragraph (l) to read as follows:

§ 251.4 Availability of USDA Foods.

* * * * *

(f) * * *

(3) The State shall require the processor to meet Federal, State, and local health standards.

* * * * *

(k) *Distribution in rural and Tribal areas.* FNS encourages State agencies and eligible recipient agencies to implement or expand USDA Food distributions in rural, remote, and Tribal areas of the State wherever possible.

(l) *Public posting of availability of USDA Foods.* State agencies must make publicly available the list of eligible recipient agencies outlined at § 251.10(a)(3) and the State's uniform Statewide eligibility criteria to receive USDA Foods for household consumption as per § 251.5(b), so as to ensure that eligible populations understand eligibility criteria and are able to identify where they may access USDA Foods. At minimum, State agencies must publicly post the names, addresses, and contact telephone numbers for all eligible recipient agencies which distribute USDA Foods to other eligible recipient agencies, to eligible households for home consumption, or in prepared meals. The information must be posted on a publicly available Internet webpage and be updated on an annual basis or whenever changes to eligibility criteria are made.

20. Amend § 251.5 by revising paragraphs (a)(1), and (b) to read as follows::

§ 251.5 Eligibility determinations.

(a) * * *

(1) *Agencies distributing USDA Foods to households for home consumption.*

Organizations distributing USDA Foods to households for home consumption must limit the distribution of USDA Foods provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

* * * * *

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive USDA Foods provided under this part for home consumption and must make these criteria publicly available as per § 251.4(l). The criteria must:

(1) Enable the State agency to ensure only households that need food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards. Income-based standards must include a maximum income eligibility threshold at or between 185 percent to 250 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). States may propose alternative income-based eligibility standards above this threshold with supporting rationale, subject to approval by FNS; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, and the method for how residency will be determined. Length of residency, address, or identification documents shall not be used as an eligibility criterion.

* * * * *

21. Amend § 251.6 by revising paragraphs (a)(4) and (5) to read as follows:

§ 251.6 Distribution plan.

(a) * * *

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive food through The Emergency Food Assistance Program (TEFAP) for home consumption;

(5) At the option of the State agency, a plan of operation for one or more Farm to Food Bank Projects in partnership with one or more emergency feeding organizations located in the State, as described in § 251.13. The plan must include all items listed at § 251.13(e); and

* * * * *

22. Amend § 251.8 by revising paragraphs (d), (e)(1) introductory text, (e)(1)(i), and (e)(4)(iii) to read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Priority for eligible recipient agencies distributing USDA Foods.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA Foods are met, relative to both USDA Foods and any non-USDA Foods they may receive, before such funding is made available to eligible recipient agencies which distribute only non-USDA Foods.

(e) *Use of funds—(1) Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA Foods and foods secured from other sources to the extent that the foods are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct

expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of foods (including donated wild game); except that for interstate expenditures to be allowable, the foods must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(4) * * *

(iii) State agencies must not charge for foods made available under this part to eligible recipient agencies.

* * * * *

23. Amend § 251.9 by revising paragraph (e) to read as follows:

§ 251.9 Matching of funds.

* * * * *

(e) *Reporting requirements.* State agencies must identify their matching contribution on the FNS-667, Report of TEFAP Administrative Costs, in accordance with § 251.10(b)(1).

* * * * *

24. Revise § 251.10 to read as follows:

§ 251.10 Reports and recordkeeping.

(a) *Records* —(1) *Commodities.* State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for program commodities which they

receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Eligible recipient agency list.* State agencies must maintain a list of eligible recipient agencies and post this information on a publicly available website, as described in § 251.4(l).

(4) *Information about households receiving USDA Foods for home consumption.* Each distribution site must collect and maintain on record for each household receiving USDA Foods for home consumption, the name of the household member receiving USDA Foods, the number of persons in the household, and the basis for determining that the household is eligible to receive USDA Foods for home consumption.

(5) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

(b) *Reports—(1) Submission of Form FNS-667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS-667, Report of Administrative Costs (TEFAP) and

submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of USDA Foods are not maintained, in accordance with the requirements of § 250.18(a) of this chapter.

(3) *Report of eligible recipient agency list.* On an annual basis, each State agency must provide the list of eligible recipient agencies and statewide eligibility criteria, as described in paragraph (a)(3) of this section, to FNS. The report should specify whether each eligible recipient agency has an agreement with the State agency or with another eligible recipient agency,

(4) *Recipients of USDA Foods for home consumption.* State agencies must report the total number of persons receiving USDA Foods for home consumption as collected in paragraph (a)(4) of this section to FNS on a quarterly basis. This report must capture the total number of persons in all households which participated in each calendar month within the quarter.

(c) *Confidentiality of applicants and participants--(1) Confidential applicant and participant information.* Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of TEFAP application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other federal, state or local law.

(2) Limits on disclosure of information obtained from applicants or participants.

State and local agencies must restrict the use or disclosure of information obtained from TEFAP applicants or participants to persons directly connected with the administration or enforcement of the program. With the consent of the participant, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

(3) Limits on disclosing the identity of persons making a complaint or allegation against an individual participating in or administering the program. The State and local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering TEFAP, except as necessary to conduct an investigation, hearing, or judicial proceeding, as applicable.

25. Add § 251.11 to read as follows:

§ 251.11 State monitoring system.

(a) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with federal and state requirements. State agencies may not delegate this responsibility.

(b) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(1) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided each such agency must be reviewed no less frequently than once every four years; and

(2) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive USDA Foods and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of USDA Foods and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(c) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(d) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (b) of this section.

(e) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

26. Add § 251.12 to read as follows:

§ 251.12 Limitation on unrelated activities.

(a) Activities unrelated to the distribution of USDA Foods or meal service may be conducted at distribution sites as long as:

(1) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department. Nutrition education materials, such as recipes or other information about USDA Foods, dates of future distributions, hours of operations, or information about other federal, state, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(2) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of USDA Foods for home consumption or prepared meals containing USDA Foods (cooperation includes contributing money, signing petitions, or conversing with the person(s));

(3) The activity is not conducted in a manner that disrupts the distribution of USDA Foods or meal service, and;

(4) The activity does not involve information unrelated to TEFAP being placed in or printed on bags, boxes, or other containers in which USDA Foods are distributed.

(b) Eligible recipient agencies and distribution sites shall ensure that activities unrelated to the distribution of USDA Foods or meal service are conducted in a manner consistent with paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any eligible recipient agency that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (a) of this section.

(d) The State agency may withhold termination of an eligible recipient agency's or distribution site's TEFAP participation if the State agency cannot find another eligible recipient agency to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the violating organization to ensure that no further violations occur.

27. Add § 251.13 to read as follows:

§ 251.13 Farm to Food Bank Projects.

(a) *Definition of project.* Farm to Food Bank Projects are the harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by

emergency feeding organizations under section 203D of the Emergency Food Assistance Act of 1983.

(b) *Availability and allocation of funds.* Funds for the costs of carrying out a Farm to Food Bank Project will be allocated to State agencies as follows:

(1) Funds made available to the Department for Farm to Food Bank Projects will be distributed to State agencies that have submitted an approved amendment to their State plan. The amendment must describe a plan of operation for a Farm to Food Bank Project and include all elements listed in paragraph (e) of this section. The plan of operation must be updated and resubmitted on an annual basis by the dates requested by FNS.

(2) Funds for Farm to Food Bank Projects will be distributed each fiscal year to State agencies using the funding formula defined in § 251.3(h).

(3) Funds will be available to State agencies for one year from the date of allocation.

(c) *Purpose and use of funds.* State agencies may only use funds made available under this section or the costs of carrying out a Farm to Food Bank Project.

(1) Farm to Food Bank Projects must have a purpose of:

(i) Reducing food waste at the agricultural production, processing, or distribution level through the donation of food;

(ii) Providing food to individuals in need; and

(iii) Building relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(2) Project funds may only be used for costs associated with harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by emergency feeding organizations.

(3) Project funds cannot be used to purchase foods or for agricultural production activities such as purchasing seeds or planting crops.

(d) *Matching of funds--(1) State matching requirement.* The State agency must provide a cash or in-kind contribution at least equal to the amount of funding received under this paragraph (d) for a Farm to Food Bank Project.

(2) *Allowable contributions.* State agencies shall meet the match requirement in paragraph (a)(4) of this section by providing allowable contributions as described at § 251.9(c); contributions must only be for costs which would otherwise be allowable as a Farm to Food Bank Project cost.

(3) *Emergency feeding organization contributions.* Cash or in-kind contributions from emergency feeding organizations that partner with the State agency to administer the Farm to Food Bank Project are allowable.

(4) *Food donations.* Donations of foods, including the value of foods donated as a part of a Farm to Food Bank Project, cannot count toward the match requirement in paragraph (d) of this section.

(e) *Plans of Operation for Farm to Food Bank Projects.* A plan of operation for a Farm to Food Bank Project must include:

- (1) A high-level summary of the Farm to Food Bank Project.
- (2) A description of the types of foods expected to be donated through the Project.
- (3) A list of emergency feeding organizations within the State that will operate the Project in partnership with the State agency.
- (4) A list of any State agencies that will operate the Project as a part of a cooperative agreement.
- (5) A description of the Project that includes how the Project will:

(i) Reduce food waste at the agricultural production, processing, or distribution level through the donation of food;

(ii) Provide food to individuals in need; and

(iii) Build relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(6) The fiscal year in which the Project will begin operating; and

(7) A description of how the match requirement will be met.

(f) *Reallocation of funds.* If, during the course of the fiscal year, the Department determines that a State agency will not expend all of the funds allocated to the State agency for a fiscal year under this section, the Department shall reallocate the unexpended funds to other States that have an approved State Plan describing a plan of operation for a Farm to Food Bank Project during that fiscal year or the subsequent fiscal year.

(g) *Reporting requirements.* Each State agency to which Farm to Food Bank Project funds are allocated for a fiscal year must submit a report describing use of the funds. The data must be identified on Form SF-425, Federal Financial Report, and submitted to the appropriate FNS Regional Office on a semiannual basis. The reports, including a final report, must be submitted by the dates requested by FNS.

(h) *Cooperative agreements.* State agencies that carry out a Farm to Food Bank Project may enter into cooperative agreements with State agencies of other States to maximize the use of commodities donated under the project.

28. Ad § 251.14 to read as follows:

§ 251.14 Miscellaneous.

(a) *USDA Foods not income.* In accordance with section 206 of Public Law 98-8, as amended, and notwithstanding any other provision of law, USDA Foods distributed for home consumption and meals prepared from USDA Foods distributed under this part

shall not be considered income or resources for any purposes under any federal, state, or local law.

(b) *Nondiscrimination.* There shall be no discrimination in the distribution of USDA Foods for home consumption or availability of meals prepared from USDA Foods donated under this part in accordance with the most up-to-date USDA nondiscrimination statement.

(c) *Use of volunteer workers and non-USDA foods.* In the operation of The Emergency Food Assistance Program, State agencies and eligible recipient agencies shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(d) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide USDA Foods or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

(e) *Recruitment activities related to the Supplemental Nutrition Assistance Program (SNAP).* Any entity that receives USDA Foods identified in this section must adhere to regulations set forth under § 277.4(b)(6) of this chapter.

PART 251 [Amended]

29. In addition the amendments above, amend part 251 by:

- a. Removing the words “commodity” and “commodities” wherever they appear and adding, in their place, the words “USDA Foods”;
- b. Removing the words “TEFAP commodities” and “TEFAP foods” wherever they appear and adding, in their place, the words “USDA Foods”; and

c. Removing the words “donated commodity”, “donated commodities”, “commodities donated”, “USDA commodities”, “USDA donated commodities”, “donated food”, and “program food” wherever they appear and adding, in their place, the words “USDA Foods”.

PART 253 – ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

30. The authority citation for part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011-2036).

31. Revise § 253.1 to read as follows:

§ 253.1 General Purpose and Scope

This part describes the terms and conditions under which: USDA Foods (available under part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations (ITOs) and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program and the Supplemental Nutrition Assistance Program (SNAP) on Indian reservations when such concurrent operation is requested by an ITO.

32. Amend § 253.2 by revising the definitions of “Indian tribal organization (ITO)”, “Overissuance”, and “State agency” and removing the definition of “Urban place” to read as follows:

§ 253.2 Definitions.

* * * * *

Indian Tribal Organization (ITO) means:

(1) The recognized governing body of any Indian tribe on a reservation; or

(2) The tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to operate the SNAP or a Food Distribution Program on their behalf.

* * * * *

Overissuance means the dollar value of USDA Foods issued to a household that exceeds the dollar value of USDA Foods it was eligible to receive.

* * * * *

State agency means:

(1) The agency of State government, including the local offices thereof, which enters into an agreement with FNS for the distribution of USDA Foods on all or part of an Indian reservation, and

(2) The ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, which enters into an agreement with FNS for the distribution of USDA Foods on all or part of an Indian reservation.

33. Amend § 253.3 by revising the section heading and paragraphs (a), (b) introductory text, (b)(1), and (d) to read as follows:

§ 253.3 Availability of USDA Foods.

(a) *Conditions for distribution.* In jurisdictions where the Food Stamp Program is in operation, there shall be no distribution of commodities to households under the authority of any law, except that distribution may be made:

(1) On a temporary basis under programs authorized by law to meet disaster relief needs;

(2) For the purpose of the USDA Foods programs in accordance with the requirements of part 250 and with other federal regulations applicable to specific food assistance programs; and

(3) Whenever a request for concurrent or separate Food Distribution Program on a reservation is made by an ITO.

(b) *Concurrent or separate food program operation.* Distribution of USDA Foods under the Food Distribution Program, with or without the SNAP, shall be made whenever an ITO submits to FNS a completed application for the Food Distribution Program on all or part of a reservation and the application is approved by FNS.

(1) Except as provided in paragraph (b)(2) of this section, when the Food Distribution Program is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program, or, if the ITO has elected concurrent operation of the SNAP, may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(d) *Food distribution program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of USDA Foods made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to SNAP benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size. FNS will periodically assess how the USDA Foods provided in the Food Distribution Program compares to the Dietary Guidelines for Americans and the market baskets of the Thrifty Food Plan and, to the extent practicable, will adjust the food package as needed to ensure that the food package benefit is in alignment. The food package benefit will not decrease based on this adjustment.

34. Amend § 253.4 by:

a. In paragraph (b)(3):

- i. Removing the term “contract” and adding, in its place, the term “delegate”; and
- ii. Removing the terms “commodity” and “commodities” and adding in their place the term “USDA Foods”; and

b. In paragraph (d):

- i. Removing the term “Food Stamp Program” and adding in its place the term “SNAP”; and
- ii. Removing the fifth and sixth sentences.

35. Amend § 253.5 by revising paragraphs (a)(2)(iv) and (e) to read as follows:

§ 253.5 State agency requirements.

(a) * * *

(2) * * *

(iv) There shall be no discrimination in the certification of applicant households or in the distribution of USDA Foods in accordance with the most up-to-date USDA nondiscrimination statement and the Food Distribution Program will be operated in compliance with all nondiscrimination laws, regulations, and FNS guidance.

* * * * *

(e) *Outreach and referral.* The State agency shall inform potentially eligible households of the availability of the Food Distribution Program. The State agency shall develop and distribute printed information in the appropriate languages about the program and eligibility requirements. Outreach material shall contain information about a household's right to file an application on the same date it contacts the certification office. The State agency shall be sufficiently familiar with general eligibility requirements for the Supplemental Food Program for Women, Infants and Children (WIC), the Commodity Supplemental Food Program (if available to reservation residents), the

Supplemental Security Income Program (SSI), and appropriate public and general assistance programs, to identify those applicants whose households contain persons who may be eligible for these programs, to inform the applicants of their potential eligibility, and to provide the applicants with the addresses and telephone numbers for these programs. For example, the State agency should provide information on the WIC program to applicants whose households contain pregnant women, nursing or postpartum women, or children up to the fifth birthday.

* * * * *

36. Amend § 253.6 by

- a. Revising paragraph (a)(1) introductory text;
- b. Removing paragraphs (a)(2)(ii) and (iii);
- c. Redesignating paragraphs (a)(2)(iv) and (v) as paragraphs (a)(2)(iii) and (iv);
- d. Adding a new paragraph (a)(2)(ii);
- e. Adding paragraph (a)(4); and
- f. Revising paragraphs (c)(1), (d)(1)(i), (d)(3)(vii), (d)(3)(x)(C) and (e)

The revisions and addition read as follows:

§ 253.6 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution.

* * * * *

(2) * * *

(ii) *Disqualified individuals.* Individuals disqualified from the Food Distribution Program per 253.7(f)(1) and SNAP for fraud, as set forth in § 273.16.

(4) *Children.* A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member must be considered a member of the household. A child must be considered under parental control for purposes of this provision if they are financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

* * * * *

(c) *Income eligibility standards of public assistance, supplemental security income (SSI), and certain general assistance households.* (1) Households in which all members are included in a federally aided public assistance or SSI grant, except as provided for in paragraph (a)(2)(ii) of this section, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income of the household members.

* * * * *

(d) ***

(1) ***

(i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, SSI, paragraph (c) of this section, or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the applicable SNAP net monthly income eligibility standards for the appropriate area, increased by the amount of the applicable SNAP standard deduction for that area.

* * * * *

(3) * * *

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during

temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

* * * * *

(x) * * *

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated USDA Foods, SNAP, or public assistance at the time they joined the title I program, except that households which are receiving an income exclusion for a VISTA or other title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving federally donated USDA Foods, SNAP or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

* * * * *

(e) *Income deductions*--(1) *Earned income deduction*. Households with earned income, as defined in paragraph (d)(2)(i) of this section, shall be allowed a deduction of twenty percent of their gross earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) *Dependent care deduction*. Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household

member to accept or continue employment or attend training or pursue education which is preparatory to employment.

(3) *Child support deduction.* Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) *Excess medical deduction.* Households must receive a medical deduction for that portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 253.2. Spouses or other persons receiving benefits as a dependent of a Supplemental Security Income (SSI), or disability and blindness recipient are not eligible to receive this deduction; however, persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. The allowable medical costs are those permitted at 7 CFR 273.9(d)(3) for the Supplemental Nutrition Assistance Program (SNAP).

(5) *Shelter/utility standard deduction.* Households that incur monthly shelter and utility expenses will receive a shelter/utility standard deduction. The household may choose to receive a standard deduction or to provide actual expenses, subject to the provisions below.

(i) The household must incur, on a monthly basis, at least one allowable shelter/utility expense. The allowable shelter/utility expenses are those permitted at 7 CFR 273.9(d)(6)(ii) for SNAP.

(ii) The shelter/utility standard deduction amounts are set by FNS. The standard deductions are adjusted annually to reflect changes to SNAP maximum monthly excess

shelter expense limits per 7 CFR 273.9(d)(6)(ii). FNS will advise the State agencies of the updates prior to October 1 of each year.

(iii) Households that select actual expenses, may claim expenses up to the amount that does not exceed 50 percent of their net monthly income.

37. Amend § 253.7 by revising paragraph (a)(6)(i)(C) paragraph heading, and paragraphs (a)(6)(i)(D) and (a)(6)(v) to read as follows:

§ 253.7 Certification of households.

(a) * * *

(6) * * *

(i) * * *

(C) *Medical expense deduction.* * * *

(D) *Shelter/utility standard deduction.* A household must incur, on a monthly basis, at least one allowable shelter/utility expense in accordance with 7 CFR 253.6(e)(5)(i) to qualify for the shelter/utility deduction. The State agency must verify that the household incurs the expense. If the household chooses to provide actual expenses, then the State agency must obtain verification for each shelter/utility deduction that the household wishes to deduct.

* * * * *

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in gross income if the source has changed or the amount has changed by more than \$100 per month since the last time the gross income was verified. State agencies may verify income which is unchanged or has changed by \$100 per month or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at

recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

* * * * *

38. Revise § 253.10 to read as follows:

§ 253.10 USDA Foods inventory management, storage, and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of commodities to households and the control of and accountability for the commodities upon its acceptance of the commodities at time and place of delivery.

(b) *USDA Foods inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of USDA Foods inventories at storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that USDA Foods inventories at each storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of USDA Foods.

(c) *Inventory management and control.* The State agency shall as a minimum ensure that: all USDA Foods are stored and inventory is maintained per §§ 250.12 and 250.14 of this chapter.

(d) *Distribution.* The State agency shall distribute USDA Foods only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service or similar organization to effect or assist in the certification of households or distribution of USDA Foods, the State agency shall impose upon such organization responsibility for determining that households to whom USDA Foods are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and

control of the Food Distribution Program. The State agency shall as a minimum ensure that:

(1) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(2) An adequate supply of USDA Foods which are available from the Department is on hand at all distribution sites.

(3) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(4) Days and hours of distribution are sufficient for caseload size and convenience.

(5) Households are advised they may refuse any USDA Foods not desired, even if the USDA Foods are prepackaged by household size.

(6) Emergency issuance of USDA Foods will be made to households certified for expedited service in accordance with the provisions of § 253.7(a)(9).

(7) Eligible households or authorized representatives are identified prior to the issuance of USDA Foods.

(8) Authorized signatures are obtained for USDA Foods issued and the issue date recorded.

(9) Posters are conspicuously displayed advising program participants to accept only those USDA Foods, and in such quantities, as will be consumed by them.

(10) Complete and current records are kept of all USDA Foods received, issued, transferred, and on hand and of any inventory overages, shortages, and losses.

(11) A list of USDA Foods offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(e) *Improper distribution or loss of or damage of USDA Foods.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for

improper distribution, use or loss, or damage of USDA Foods in accordance with §250.16 and 250.17 of this chapter.

(f) *Damaged or out-of-condition USDA Foods.* The State agency shall immediately notify the appropriate FNS Regional Office if any USDA Foods are found to be damaged or out- of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. The FNS Regional Office shall advise the State agency of the appropriate action to be taken with regard to such USDA Foods. If the USDA Foods are declared unfit for human consumption in accordance with § 250.15 of this chapter, they shall be disposed of as provided for under that section. When out-of-condition USDA Foods do not create a hazard to other food at the same location, they shall not be disposed of until the FNS Regional Office or the responsible commodity contractor approves. When circumstances require prior disposal of a commodity, the quantity and manner of disposition shall be reported to the appropriate FNS Regional Office. If any damaged or out-of-condition USDA Foods are inadvertently issued to a household and are rejected or returned by the household because the USDA Foods were unsound at the time of issuance and not because the household failed to provide proper storage, care or handling, the State agency shall replace the damaged or out-of-condition USDA Foods with the same or similar kind of USDA Foods which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

39. Add § 253.12 to read as follows:

253.12 Administrative Waivers

(a) The Administrator of the Food and Nutrition Service may waive or modify specific regulatory provisions contained in this part for one or more State agencies.

Waivers may be issued following a State agency request or at the discretion of FNS.

Waivers may be approved only in the following situations:

(1) The specific regulatory provision cannot be implemented due to extraordinary temporary situations;

(2) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(3) Unique geographic conditions within the geographic area served by the administering agency preclude effective implementation of the specific regulatory provision and require an alternate procedure.

(b) FNS shall not approve waivers when:

(1) The waiver would be inconsistent with the provisions of the Food and Nutrition Act of 2008; or

(2) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(c) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that State agencies submit appropriate justification to FNS.

(d) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will meet the conditions of paragraphs (a)(1), (a)(2), and/or (a)(3) of this section. At a minimum, requests for waivers shall include but not necessarily be limited to:

(1) Reasons why the waiver is needed;

(2) Anticipated impact on service to participants or potential participants who would be affected;

(3) Anticipated time period for which the waiver is needed; and

(4) Thorough explanation of the proposed alternative provision to be used in lieu of the waived or modified regulatory provision.

PART 253 [Amended]

40. In addition to the amendments above, amend part 253 by:

- a. Removing the word “commodities” wherever it appears and adding, in its place, the words “USDA Foods”;
- b. Removing the words “Food Stamp” and “Food Stamp Program” wherever they appear and adding, in their place, the word “SNAP”.

PART 254 – Administration of the Food Distribution Program for Indian

Households in Oklahoma

41. The authority citation for part 254 continues to read as follows:

Authority: Pub. L. 97–98, sec. 1338; Pub. L. 95–113.40.

42. Amend §254.2 by revising paragraphs (a), (b), and (d) and removing paragraph (h) to read as follows:

§ 254.2 Definitions.

* * * * *

(a) *Exercises governmental jurisdiction* means the exercise of authorities granted to ITOs under the Oklahoma Indian Welfare Act of 1936 or by BIA regulations (25 CFR part 81 et. seq.).

(b) *FNS service area* means the areas over which FNS has approved the food distribution program in Oklahoma.

* * * * *

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in § 253.2(d) of this chapter.

* * * * *

§ 254.5 [Amended]

43. Amend § 254.5 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

PART 254 [Amended]

44. Amend part 254 by removing the word “commodities” wherever it appears and adding, in its place, the words “USDA Foods”.

Stacy Dean
Deputy Under Secretary,
Food, Nutrition and Consumer Services

[FR Doc. 2023-17467 Filed: 8/10/2023 4:15 pm; Publication Date: 8/14/2023]